THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

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Ontario

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The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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GENERAL ANNOUNCEMENTS

Revised Annual Information Return Fee Structure

For the first time in over ten years, the fee payable by a pension plan administrator filing an Annual Information Return (AIR) has been increased.

The new fee structure applies to pension plans that provide only defined contribution benefits with an AIR filing due date on or after June 30, 2004, and to all other plans with an AIR filing due date on or after September 30, 2004. Effectively, the new fee structure applies to all plans with a plan year ending December 31, 2003, or later.

Under the new fee structure, the minimum fee per plan has been raised from $200 to $250, and the maximum fee per plan has been raised from $50,000 to $75,000. The fee per active member will remain unchanged at $6.15 per member, but a separate fee for former members and other plan beneficiaries at $4.15 per such person has been implemented.

The new fee structure enables FSCO to fully cover the costs associated with pension regulation, more equitably distributes the cost of providing regulatory services among plans registered with FSCO and ensures that a high quality of service continues to be provided by the Pension Division.

Applications for Transfer of Assets on Sale or Merger

On December 8, 2003, the Ontario Court of Appeal released its decision in *Aegeon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.* On February 6, 2004, ING Canada filed an application for leave to appeal the decision of the Ontario Court of Appeal to the Supreme Court of Canada.

The decision of the Ontario Court of Appeal raises questions about the authority of plan sponsors to transfer assets between pension plans where one or more of the pension plans is subject to a trust, and casts doubt on the authority of the Superintendent of Financial Services to consent to such transfers.

Until the Supreme Court of Canada has finally disposed of this case, the Superintendent will be treating the Court of Appeal's decision as binding. Consequently, the Superintendent has taken the position that consent to a transfer of assets on sale or merger will be considered if:

- the applicant can demonstrate that none of the pension plans involved is subject to a trust; or
- the applicant can demonstrate that all of the pension plans involved are defined contribution plans with no defined benefit liabilities of any kind.

In addition, the Superintendent will consider applications for the transfer of assets if the applicant can demonstrate that the *Aegeon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.* decision does not otherwise apply to the application.

Please note that all pension plans must continue to be fully administered in accordance with the *Pension Benefits Act*, R.S.O. 1990, and Regulation 909, R.R.O. 1990, as amended, without consideration of any potential transfer of assets or merger.

COURT/PROSECUTION MATTERS

The information set out below is current to April 15, 2004.

Court Matters

I. Monsanto

The Court of Appeal held that subsection 70(6) of the *Pensions Benefits Act* requires a distribution of surplus assets on partial wind up. On June 5, 2003, the Supreme Court of Canada granted leave to Monsanto Canada Inc. and the Association of Canadian Pension Management to appeal the Court of Appeal's decision. Five parties were granted intervener status in the appeal: National Trust Company; a group of former members of the National Trust Plan; one former member of the Monsanto Plan; the federal Ministry of the Attorney General representing the Office of the Superintendent of Financial Institutions; Nicole Lacroix, representing a group that has started a class action over pension surplus against Canada Mortgage & Housing Corporation; and the Canadian Labour Congress/Ontario Federation of Labour. The appeal was heard on February 16, 2004. The Court reserved its decision.

II. Ontario Teachers' Pension Plan Board (Anne Stairs)

In a decision issued on June 18, 2002, the Divisional Court ordered the Superintendent to issue an order directing the Ontario Teachers' Pension Plan Board to pay Ms. Stairs a pre-retirement death benefit pursuant to a separation agreement, subject to section 51 of the *Pension Benefits Act*. On September 3, 2002, the Court heard a motion by the Board to vary the decision insofar as quantum is concerned. The Court's decision on the motion was released on December 5, 2002. The Court also determined that the valuation date for the purposes of the calculation of quantum was the date of the divorce. The Court held that Ms. Stairs was entitled to not more than 50% of the pre-1987 death benefit plus 50% of the post-1986 death benefits to the date of divorce. The Court issued a declaration in respect of the pre-1987 amounts and directed the Superintendent to issue an order in respect of the post-1986 amounts. Ms. Stairs was awarded $40,000 plus disbursements in costs.

The Board applied for and obtained leave from the Court of Appeal to appeal the decision on quantum. Ms. Stairs applied for and obtained leave from the Court of Appeal to cross appeal the decision on quantum. The appeals were heard in the Court of Appeal on November 10, 2003. The Court released its decision on February 10, 2004, holding that Ms. Stairs was entitled to pre-retirement death benefits for both the pre-1987 and post-1986 periods of employment. However, the Superintendent only had jurisdiction to order the post-1986 benefits to be paid because neither the *Pension Benefits Act* nor the Plan provided for pre-1987 pre-retirement death benefits. The Court held that the valuation date was the date of death (based on the "wait and see" method employed with respect to the pension in the separation agreement) and that the 50% rule in subsection 51(2) of the *Pension Benefits Act* applied to the pre-retirement death benefits, not the entire pension benefit. The Court found that Ms. Stairs' interest was not derivative of the current spouse's interest and was therefore to be calculated based on her date of birth and was to continue until her date of death. Finally, the Court awarded costs to Ms. Stairs in the amount of $25,000.00 payable on a partial indemnity basis by the Board.

III. National Steel Car Limited

The Superintendent consented to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan") to the Amended Pension Plan for Hourly Employees of National Steel Car Limited (the "Hourly Plan"). The Superintendent's consent was given after submissions opposing the transfer were made by some members of the Salaried Plan. The letter giving the consent stated that anyone dissatisfied with the consent could request a hearing before the Financial Services Tribunal ("FST"). A hearing was requested.

The FST held the hearing on January 15 to 17, 2002. On May 31, 2002, the FST released its decision. In response to a motion brought by National Steel Car at the hearing, a majority decision held that the FST has no jurisdiction to conduct a hearing where the Superintendent has consented to the transfer of assets, relying upon the express wording of subsection 89(4). One panel member dissented, finding that there was jurisdiction based on the HOOPP and other cases and on a purposive reading of the *Pension Benefits Act*. The panel unanimously found that if there was jurisdiction, the Superintendent's consent would have been upheld, as surplus was not an "other benefit" to be considered under subsection 81(5) of the *Pension Benefits Act*.

The Salaried Plan members have appealed the FST's decision to the Divisional Court. The appeal was set to be heard on January 29 and 30, 2004, but was adjourned to September 13 and 14, 2004.

IV. Marshall-Barwick Limited

The Financial Services Tribunal ("FST") held a hearing in this matter on September 9, 2002. The issue at this hearing was whether a Notice of Proposal proposing to refuse to approve the partial wind up report (because a member allegedly terminated for cause was not included in the partial wind up group) should be upheld. The FST released its decision on November 29, 2002 upholding the Superintendent's Notice of Proposal and directing the administrator to file a revised wind up report that includes, in the partial wind up group, the member terminated for cause.

The company has appealed the FST's decision to the Divisional Court. No date has been set for hearing the appeal.

V. Plumbers Local 463 Pension Plan

The board of trustees of the Plumbers Local 463 Pension Plan has filed an application for judicial review in respect of an order issued by the Superintendent on October 6, 2003, requiring the trustees to pay the cost of an examination of the Plan out of the fund for the Plan. No hearing date has been set.

VI. Donohue Forest Products Inc.

The spouse of a deceased Plan member requested a hearing before the Financial Services Tribunal ("FST")with respect to a Notice of Proposal issued by the Superintendent on November 8, 2002, which refused to order the plan administrator to recalculate the pre-retirement death benefit owing. The hearing took place July 2, 2003 and September 22 and 25, 2003. The FST released its decision on January 9, 2004, finding that the Notice of Proposal should be affirmed. The applicant has appealed the FST's decision to the Divisional Court. No date has been set yet for the hearing of the appeal.

VII. Kerry (Canada) Inc.

The Financial Services Tribunal ("FST") conducted a hearing that arose from a Notice of Proposal in which the Superintendent of

Financial Services proposed to order Kerry (Canada) Inc. to reimburse certain expenses paid from the pension fund and to amend its Pension Plan so that only expenses for the exclusive benefit of the members could be paid from the fund.

The FST released it decision on March 4, 2004. The FST held that certain expenses were to be reimbursed to the fund, while certain other expenses did not have to be reimbursed as they were incurred for the exclusive benefit of the members. The FST also held that there was no jurisdiction under the *Pension Benefits Act* for the Superintendent to order a plan amended.

A group of former members comprising the DCA Employees Pension Committee for the Pension Plan for the Employees of Kerry (Canada) Inc. has appealed the FST's decision. No date has been set for the hearing of the appeal.

Prosecution Matters

I. Mimik Industries Inc.

Charges were laid against the employer and the President of the employer for failing to remit required contributions to the Pension Plan. The first appearance was on June 13, 2002. The trial which was initially set for November 10, 2003, was adjourned on consent to May 11 and 18, 2004.

II. Microcolor Dispersions Ltd.

Charges were laid against the corporation and its 2 directors for non-remittance of employer contributions. The first appearance was on September 30, 2002. A pre-trial conference was held on January 13, 2003. The trial was originally set for September 19 and 22, 2003, but was adjourned to May 10 and 11, 2004.

III. John Parker

John Parker was a director of Microcolor Dispersions Inc. Charges were laid against Microcolor and its two directors for non-remittance contributions. The first appearance on the charges against Parker was on September 30, 2002. A pre-trial conference was held on January 13, 2003. The trial was originally set for September 19 and 22, 2003, but was adjourned to May 10 and 11, 2004.

IV. Rosko Forestry Operations Ltd.

Charges were laid against the employer and a corporate officer for the employer for failing to remit employer and employee contributions and for breach of the deemed statutory trust covering employee contributions. The first appearance in respect of the breach of trust charges was on May 22, 2003 in Haileybury, Ontario. The first appearance for the non-remittance charges was on June 2, 2003 in London, Ontario at which time the non-remittance charges were moved to Haileybury to be heard with the breach of trust charges. A pre-trial conference was held on September 8, 2003. On December 11, 2003, the trial was set for April 29, 2004 in Haileybury.

V. Christopher Bain

Christopher Bain was a director and officer of Microcolour Dispersions Ltd. Charges were laid against Microcolour Dispersions Ltd. and its directors for non-remittance of contributions. Christopher Bain was convicted in his personal capacity for permitting the company to contravene the *Pension Benefits Act*. He was placed on probation and required to make restitution to the Plan. He failed to comply with the probation order and was charged with breach of probation. He recently pleaded guilty to breach of probation and after arranging to make full restitution to the Pension Plan he was fined $250 on December 12, 2003.

VI. Slant/Fin Ltd./Ltee.

Charges were laid against the corporation for failing to file four financial statements in respect of the Employee Retirement Plan of Slant/Fin Limited. The first appearance was on January 15, 2004. On February 2, 2004, the corporation pleaded guilty to three of the four counts and was fined $3,000, exclusive of the victim fine surcharge.

VII. Meto Canada Inc.

Charges were laid against the corporation for failing to file a financial statement for the fiscal years ending 1999, 2000, 2001 and 2002 with respect to the Meto Canada Inc. Employees Pension Plan. The first appearance was on April 6, 2004, when the matter was adjourned to May 4, 2004.

VIII. Mutual/Hadwen Imaging Technologies Inc.

Charges were laid against the employer, successor employer and two corporate officers for the employer and successor employer for failing to remit employer and employee contributions. The first appearance was on April 14, 2004, when trail dates were set for January 17 to 21, 2005.

LEGISLATIVE CHANGES/REGULATORY POLICIES

Ontario Regulation 444/03

On December 19, 2003, Ontario Regulation 444/03 was filed under the *Pension Benefits Act* to extend the application of subsections 8(1) and 8(2) of Regulation 909 to December 31, 2004.

SUPERINTENDENT OF FINANCIAL SERVICES

Administrator Appointments — Section 71 of the *Pension Benefits Act*

1. Morneau Sobeco as the Administrator of the Pension Plan for Hourly Employees of Ford-Smith Machine Company Limited (Registration No. 541565), effective immediately.

   DATED at Toronto, Ontario, this 2nd day of February, 2003.

2. Morneau Sobeco as the Administrator of the Non-Contributory Retirement Plan for Salaried Employees of Ford-Smith Machine Company Limited and Ford-Smith Company Limited (Registration No. 288845), effective immediately.

   DATED at Toronto, Ontario, this 2nd day of February, 2003.

3. London Life as the Administrator of the Retirement Plan for the Employees Of 821314 Ontario Ltd. (Registration No. 1031491), effective immediately.

   DATED at Toronto, Ontario, this 21st day of January, 2003.

4. London Life as the Administrator of the Graphicshoppe Limited Pension Plan (Registration No. 695676), effective immediately.

   DATED at Toronto, Ontario, this 21st day of January, 2003.

5. PricewaterhouseCoopers as the Administrator of the Pension Plan for Employees of Ryancon (Registration No. 298430), effective immediately.

   DATED at Toronto, Ontario, this 17th day of December, 2003.

6. Canada Life as the Administrator of the Pension Plan for Employees of Arpeco Engineering Limited (Registration No. 0968537), effective immediately.

   DATED at Toronto, Ontario, this 1st day of December, 2003.

7. Manulife as the Administrator of the Pension Plan for the Employees of Greenspoon Bros. Ltd. (Registration No. 258889), effective immediately.

   DATED at Toronto, Ontario, this 27th day of October, 2003.

8. Morneau Sobeco as the Administrator of the Pension Plan of Marmoraton Mining Company (Registration No. 276139), effective immediately.

   DATED at Toronto, Ontario, this 16th day of October, 2003.

9. Standard Life as the Administrator of the Pension Plan for the Employees of Elias Markets Ltd. (Registration No. 1063486), effective immediately.

   DATED at Toronto, Ontario, this 23rd day of July, 2003.

Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 87 of the Act relating to the **Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915 (the "Plan");**

TO: **Kerry (Canada) Inc.**
c/o Mr. William R. Coole,
Vice President & General Council
Kerry Inc.
100 East Grand Avenue,
Beloit, WI
USA

Employer and Administrator

AND TO: **Mr. J. David Vincent**
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
66 Wellington Street West
Suite 4200
Toronto Dominion Bank Tower
Box 20, Toronto Dominion Centre
Toronto, Ontario
M5K 1N6

Counsel to the Employer and Administrator

AND TO: **DCA EMPLOYEES PENSION COMMITTEE and WILLIAM FITZ**
c/o 112 Reeve Drive
Markham, Ontario
L39 6C7

Requesters

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 87 of the Act.

PROPOSED ORDER:

I PROPOSE TO ORDER

1. **THAT** the Employer reimburse the pension fund of the Plan (the "Fund') for all amounts paid out of the Fund after January 1, 1985, for expenses which were not incurred for the exclusive benefit of the members and retired members of the Plan, their beneficiaries or estates and their contingent annuitants (other than taxes, interest and penalties levied against the Fund or the income thereof) **AND** reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund.
2. **THAT** the Employer amend the Plan and the Trust (both as defined herein), so that all amendments to the terms of the Plan and the Trust which permit expenses to be deducted from the Fund are consistent with the 1954 Trust Agreement and the 1954 Plan Document (both as defined herein).

REASONS FOR THE ORDER:

1. Canadian Doughnut Company Ltd. established the Plan as a defined benefit plan for employees in 1954, using a Plan Document (the "1954 Plan Document") and a Trust Agreement made as of December 31, 1954 (the "1954 Trust Agreement") with National Trust Company, Limited as the Trustee. Under the terms of the Plan the pension fund was to be held in trust (the "Trust").
2. Section 5 of the 1954 Trust Agreement provided that the expenses incurred by the Trustee would be paid by the Company, except for taxes, interest and penalties.

Section 11 permitted the 1954 Trust Agreement to be amended, but provided that all contributions may only be used exclusively for the benefit of members, retired members, their beneficiaries or estates and their contingent annuitants.

3. The 1954 Trust Agreement was replaced by an agreement made as of May 31st, 1958 between DCA Food Industries Ltd., formerly Canadian Doughnut Company Ltd. and National Trust Company, Limited (the "1958 Trust Agreement").
4. Section 1 of the 1958 Trust Agreement required all contributions made to the Fund to be held in trust and dealt with in accordance with the provisions of the Agreement. It specified that "no part of the corpus or income of the Fund shall ever revert to the Company or be used for or diverted to purposes other than for the exclusive benefit of such persons as from time to time may be designated in the Plan."
5. Section 11 of the 1958 Trust Agreement permitted the agreement to be amended in whole or in part or terminated at any time. It specified: "provided however that unless approved by the Minister of National Revenue no such amendment shall authorize or permit any part of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of such employees, or their beneficiaries or personal representatives as from time to time may be included under the Plan, and for the payment of taxes, assessments or other charges as provided in Section 5 and Section 19 herein..."
6. Section 5 of the 1958 Trust Agreement provided that the expenses of the Trustee shall be paid by the Company, but that all taxes, including interest and penalties levied in connection with the Fund or the income thereof shall be paid from the Fund.
7. Section 19 of the 1958 Trust Agreement provided that the Company agreed to "pay all expenses incurred by it or by any Trustee in the execution of this Trust and to pay all compensation which may become due to any Trustee under the provisions of this Agreement."
8. The Plan was amended in 1975 to permit the fees and expenses incurred by the Fund Manager to be paid from the Fund. Amendments made in 1987 provided that all normal and reasonable expenses incurred in the operation of the Plan shall be withdrawn from the Fund, unless otherwise paid by the Company. Subsequent amendments have enlarged the list of expenses that can be paid from the Fund.
9. The amendments to the pension trust made by the 1958 Trust Agreement are inconsistent with the terms of the 1954 Trust Agreement to the extent that such amendments permitted any part of the Fund to be used other than for the exclusive benefit of the members and others referred to in section 11 of the 1954 Trust Agreement.
10. The amendments to the Plan which permitted expenses to be paid from the Fund, described in paragraph 8 above, are inconsistent with sections 5 and 11 of the 1954 Trust Agreement. The amending provision in the 1954 Trust Agreement permits amendments so long as no part of the Fund is used for or diverted to purposes other than for the exclusive benefit of the members and others referred to in section 11 of the 1954 Trust Agreement (except for the payment of taxes and interest and penalties as described in section 5).

11. The former president of DCA Canada Inc. has confirmed that the Company paid the expenses of the Trustee and of the operation of the Plan until 1985.
12. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at Toronto, Ontario, this 22nd day of April, 2002.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Britrail Travel International (Canada) Retirement Plan, Registration No. 0404095;**

TO: **Rail Europe Group Inc.**
44 South Broadway
White Plains, New York 10601

Attention: Mr. Duncan Still,
Chief Financial Officer

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Britrail Travel International (Canada) Retirment Plan, Registration No. 0404095 (the "Plan"), to Rail Europe Group Inc. in the amount of $644,801.24 as at June 30, 1996, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me in writing of the distribution of surplus assets pursuant to section 79(3)(c) of the Act, to members, former members and other persons entitled to such payment in accordance with the Surplus Sharing Agreement.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Rail Europe Group Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective June 30, 1996.
3. As at June 30, 1996, the surplus in the Plan was estimated at $718,000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the members and 85.7% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 89.81% to the Employer; and
   b) 10.19% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 89.81% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 31st day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Ms. Reesha Hosein,
Blake, Cassels & Graydon LLP

Ms. Lorraine Mahoney,
Allan Smart Services

Mr. Robert Southern

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404;**

TO: **United Dominion Industries Corporation**
c/o Mr. Jeffrey L. Nugent
SPX Corporation
501 South Heilbron Drive
MEDIA, PA 19063
USA

Applicant and Employer

AMENDED NOTICE OF PROPOSAL

(amended October 31, 2003)

WHEREAS United Dominion Industries Limited made an application to the Superintendent of Financial Services for the consent of the Superintendent to payment of money that is surplus dated December 21, 2000.

AND WHEREAS effective June 30, 2000, United Dominion Industries was amalgamated with UDI Nova Scotia Holding Company pursuant to the *Companies Act* of Nova Scotia, being Chapter 81 of the Revised Statutes of Nova Scotia, 1989, to form United Dominion Industries Corporation.

AND WHEREAS as a result of such amalgamation, United Dominion Industries Corporation assumed all of the obligations and liabilities of United Dominion Industries Limited, including the sponsorship of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404, and is therefore the Applicant and Employer.

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404 (the "Plan"), to United Dominion Industries Corporation in the amount of $2,204,469 as at June 30, 2000, plus investment earnings thereon to the date of payment less the expenses related to the wind up of the plan and the distribution of surplus.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph #5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. United Dominion Industries Corporation is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective June 30, 2000.
3. As at June 30, 2000, the surplus in the Plan was estimated at $2,755,586.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the members, the surplus in the

Plan at the date of payment, after deduction of wind up expenses is to be distributed:

a) 80% to the Employer; and

b) 20% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.

6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 80% of the surplus in the Plan adjusted for investment earnings and expenses related to the wind up of the Plan.

7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 31st day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Mr. Douglas Rienzo,
Osler, Hoskin & Harcourt LLP

Mr. Jeremy Forgie,
Blake, Cassels & Graydon LLP

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183 (the "Pension Plan");**

TO: **London Life Insurance Company**
255 Dufferin Avenue
London ON N6A 4K1

Attention: Darlene Sundercock,
Wind-up Specialist
Group Retirement Services

Administrator of the Pension Plan

AND TO: **Cobra Machine Tool Co. Inc.**
11600 County Road 42
R.R. #2
Tecumseh ON N8N 2M1

Attention: Charles Roberts,
General Manager

Employer

AND TO: **KPMG Inc.**
140 Fullarton Street
Suite 1200
P.O. Box 2305
London ON N6A 5P2

Attention: Stephen N. Cherniak, CA, CIRP
Vice President

Trustee in Bankruptcy of Cobra Machine Tool Co. Inc.

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183, be wound up in full effective May 10, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
5. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 7th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339 (the "Pension Plan");**

TO: **Sun Life Assurance Company of Canada**
227 King Street South
Waterloo ON N2J 4C5

Attention: Lisa Wroblewski,
Account Representative

Administrator of the Pension Plan

AND TO: **General Publishing Co. Limited**
895 Don Mills Road
Suite 400, 2 Park Centre
Toronto ON M3C 1W3

Attention: Mary Hainey,
Administrator

Employer

AND TO: **Deloitte & Touche Inc.**
79 Wellington Street West
P.O. Box 1900
Toronto Dominion Centre
Toronto ON M5K 1B9

Attention: Rob Biehler,
Vice-President

Trustee in Bankruptcy of General Publishing Co. Limited

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339, be wound up in full effective August 20, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
3. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
5. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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DATED at Toronto, Ontario, this 7th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **GPC Canada Inc. Pension Plan for J. Patrick Howe, Registration No. 0681619;**

TO: **GPC Canada Inc.**
Suite 1300
100 Queen Street
Ottawa ON K1P 1J9

Attention: Jeremy Scott
VP & General Counsel

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the GPC Canada Inc. Pension Plan for J. Patrick Howe, Registration No. 0681619 (the "Plan"), to GPC Canada Inc. in the amount of $12,000 as at January 1, 2003, with no adjustments to the date of payment.

I PROPOSE TO MAKE THE ORDER conditional on the Applicant satisfying me that provision has been made for the settlement of liabilities of the Pension Plan as calculated for purposes of termination of the Pension Plan, and on the remainder of the surplus being paid to the member.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. GPC Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective January 1, 2003.
3. As at January 1, 2003, the surplus in the Plan was estimated at $17,200.
4. The Plan provides for payment of $12,000 of the surplus to GPC Canada Inc. on the wind up of the Plan, for immediate transfer to the member as a retiring allowance.
5. The application discloses that by written agreement between the Employer and the member, $12,000 of the surplus will be paid to the Employer to provide a retiring allowance to the member, with the remainder of the surplus being paid to the member.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of surplus in the Plan.
7. The application appears to comply with subsection 79(3)(a) and 79(3)(b) of the Act and with clause 8(1)(b).
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

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DATED at Toronto, Ontario, this 7th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. **Ashley Crozier,**
Crozier Consultants Inc.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Federal White Cement Limited Pension Plan for Designated Executives, Registration No. 0996819;**

TO: **Federal White Cement Limited**
P.O. Box 548
Woodstock ON N4S 7Y5

Attention: Mr. Antonio M.A. Lopes, CA, MBA
Controller

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Federal White Cement Limited Pension Plan for Designated Executives, Registration No. 0996819 (the "Plan"), to Federal White Cement Limited in the amount of $173,300 as at December 31, 2002, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Federal White Cement Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 2002.
3. As at December 31, 2002, the surplus in the Plan was estimated at $173,300.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding of investment earnings and deducting 100% of the expenses related to the wind up of the Plan).
6. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
7. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

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14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

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DATED at Toronto, Ontario, this 25th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Ms. Donna Wolfe,
Cowan Wright Beauchamp Limited

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Revised Pension Plan for Employees of Pelee-Delta Electric Inc. Registration Number 363218;**

TO: **Canada Life Assurance Company**
330 University Avenue
Toronto ON M5G 1R8

Attention: Ms. Milica Stojsin
Administrator

AND TO: **Pelee-Delta Electric Inc.**
P.O. Box 2049
Sarnia Stn. Main
Sarnia ON N7T 7L3

Attention: Ms. Paula Pope
Employer

AND TO: **Funtig & Associates Inc.**
484 Pelissier St.
Windsor ON N9A 4K9

Attention: Mr. Peter Wasylyk
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the PBA.

PROPOSED ORDER:

That the Revised Pension Plan for Employees of Pelee-Delta Electric Inc., Registration Number 363218 (the "Plan"), be wound up in whole effective November 13, 2001.

REASONS:

1. There is a cessation or suspension of contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. There is a failure of the Employer to make contributions to the pension fund pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada) pursuant to clause 69(1)(c) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

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DATED at North York, Ontario, this 25th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Pension Plan for Bono Construction Limited, Registration Number 0499608 (the "Pension Plan");**

TO: **The Canada Life Assurance Company**
330 University Avenue
Toronto ON M5G 1R8

Attention: Milica Stojsin,
Plan Wind-up Consultant
Investments & Pensions

Administrator of the Pension Plan

AND TO: **Bono General Construction Limited**
899 Nebo Road
R.R. #2, P.O. Box 51
Hannon ON L0R 1P0

Attention: Joe Muraca,
Office Manager

Employer

AND TO: **PricewaterhouseCoopers Inc.**
145 King Street West
Toronto ON M5H 1V8

Attention: Clark Lonergan

Trustee in Bankruptcy for Bono General Construction Limited

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Bono Construction Limited, Registration Number 0499608, be wound up in full effective December 31, 2000.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
3. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
5. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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M2N 6L9

Attention: The Registrar

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DATED at Toronto, Ontario, this 12th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Retirement Plan for Employees of Peterborough Paper Converters Inc., Registration No. 283358 (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant

Administrator

AND TO: **Peterborough Paper Converters Inc.**
550 Braidwood Avenue
Peterborough ON K9J 1W1

Attention: Mr. Blair Nixon,
Vice-President, Finance

Employer

AND TO: **Sack Goldblatt Mitchell**
20 Dundas Street West, Suite 1130
PO Box 180
Toronto ON M5G 2G8

Attention: Mr. Michael Kainer

Counsel for Graphic Communications International Union Local 100-M representing the bargaining unit members of the Plan

AND TO: **PricewaterhouseCoopers Inc.**
55 King Street West, Suite 900
Kitchener ON N2G 4W1

Attention: Mr. Aldis Makovskis,
Senior Vice-president

Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective February 1, 2002 through March 8, 2002.

REASONS:

1. Cessation or suspension of the Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members of the Pension Plan have ceased to be employed by the Employer as a result of the discontinuance or reorganization of all or part of the business of the Employer, pursuant to clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

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IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 12th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration No. 0567479;**

TO: **ExxonMobil Chemical Films Canada Ltd.**
321 University Avenue
Belleville, Ontario K8N 5A2

Attention: Robert Hallsworth,
Plant Manager

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration No. 0567479 (the "Plan"), to ExxonMobil Chemical Films Canada Ltd. in the amount of $800,000 estimated as at October 31, 1986, plus investment returns thereon to the date of payment less half of the expenses associated with the wind up of the Plan and distribution of surplus therefrom, as contemplated by the surplus sharing agreement, dated March 26, 2003 (the "Surplus Distribution Agreement").

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all payments to which members, former members, and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. ExxonMobil Chemical Films Canada Ltd. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective October 31, 1986.
3. As at October 31, 1986, the surplus in the Plan was estimated at $1,600,000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 94.3% of the members of the Plan and 88.8% of the former members and other persons entitled to payments under the Plan, the surplus in the Plan at the date of payment, after deduction of wind up and other expenses, as described in the Surplus Distribution Agreement, is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment returns and deducting 50% of the expenses related to the wind up of the Plan and the distribution of surplus therefrom, in accordance with the terms of the Surplus Distribution Agreement).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

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DATED at Toronto, Ontario, this 19th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Evan Howard, Osler Hoskin & Harcourt LLP
Ari Kaplan, Koskie Minsky

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No. 0427807;**

TO: **WCI Canada Inc.**
866 Langs Drive
Cambridge, Ontario
N3H 2N7

Attention: Richard Laba,
President

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Pension Plan for Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No. 0427807 (the "Plan"), to WCI Canada Inc. in the amount of $286,749 as at January 30, 1998, adjusted for expenses and investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. WCI Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was partially wound up, effective January 30, 1998.
3. As at January 30, 1998, the surplus in the wound up portion of the Plan was estimated at $741,349.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and the union on behalf of the affected members, approximately 61% of the surplus in the Plan attributable to the partial wind up group was used to improve benefits for the affected members with the remainder distributed after expenses.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of approximately 39% of the surplus attributable to the partial wind up group in the Plan.
7. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 6th day of January, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Marc Vigneault — Standard Life

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171 (the "Pension Plan");**

TO: **London Life Assurance Company**
255 Dufferin Avenue
London ON N6A 4K1

Attention: Darlene Sundercock,
Wind-up Specialist
Group Retirement Services

Administrator of the Pension Plan

AND TO: **Denton Technologies Inc.**
30 Casebridge Court
Scarborough ON M1B 3M5

Attention: Judy Coish,
Office Manager

Employer

AND TO: **Grant Thornton Limited**
PO Box 55, Royal Bank Plaza
19th Floor, South Tower
Toronto ON M5J 2P9

Attention: Jonathan Krieger, CA, CIRP
Vice President

Trustee in Bankruptcy and Receiver of Denton Technologies Inc.

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171, be wound up in full effective December 13, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
5. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 28th day of January, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of Hanson & Wells Inc., Registration No. 909713 (the "Plan");**

TO: **McGean-Rohco, Inc.**
c/o Torkin Manes Cohen Arbus llp
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Attention: Warren S. Rapoport,
Agent for McGean-Rohco, Inc.

Applicant

NOTICE OF PROPOSAL

WHEREAS 2756862 Canada Inc., formerly Hanson & Wells Inc., sponsored the Plan which provided a contributory defined benefit for certain of its employees;

AND WHEREAS 2756862 Canada Inc. became bankrupt effective November 30, 1993;

AND WHEREAS McGean-Rohco, Inc. is the Receiver and Secured Creditor of 2756862 Canada Inc. under a General Security Agreement dated February 25, 1993 and a Purchase Money Security Interest dated February 25, 1993;

AND WHEREAS McGean-Rohco Inc. in its capacity as Receiver of the assets of 2756862 Canada Inc. is entitled to receive any surplus funds payable to 2756862 Canada Inc. (the "Employer") under the Plan;

AND WHEREAS McGean-Rohco, Inc. made an application to the Superintendent of Financial Services for the consent of the Superintendent to payment of money out of the Plan that is surplus dated October 7, 2002.

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Plan, to McGean-Rohco, Inc. in the amount of $368,855.50 (representing 50% of the Wind Up Surplus in the Plan of $737,711.00 determined as at November 30, 1993), plus 50% of the interest, earnings and experience gains (net of all investment and experience losses thereon) on the Wind Up Surplus from November 30, 1993 to the date of distribution of the said payment, minus 50% of all reasonable costs and expenses incurred by the Plan Administrator in the administration and wind up of the Plan, and minus $25,000 representing 50% of a contingency reserve to cover any unforeseen liabilities, all of the above being in accordance with the terms of the Surplus Sharing Agreement dated March 19, 2002.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement described in paragraph #6 below) and any other payments to which the members, former members, and any other persons are entitled under the Plan have been paid, purchased or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Plan was wound up, effective November 30, 1993.
2. As at November 30, 1993, the surplus in the Plan was estimated at $737,711.
3. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
4. The Employer became bankrupt effective November 30, 1993.

5. McGean-Rohco, Inc. in its capacity as Receiver of the assets of the Employer is entitled to receive any surplus funds payable to the Employer under the Plan.
6. The application discloses that by written agreement made by McGean-Rohco, Inc., the United Steelworkers of America, Local 14183 on behalf of the hourly members who were active employees at the date of wind-up, and by 88.9% of the active salaried members, former members and other persons entitled to payments from the Plan, the surplus in the Plan at the date of payment, after deduction of wind up expenses and a contingency reserve of $50,000.00, is to be distributed:
   a) 50% to McGean-Rohco, Inc.; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
7. McGean-Rohco, Inc. has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended (the "Regulation"), for the consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment earnings and deducting 50% of the expenses and a contingency reserve accumulated or established since the wind up date of the Plan).
8. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 28th day of January, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Ms. Sharon Carew
Director, Global Human Resources
PricewaterhouseCoopers Inc.

Ms. Dona L. Campbell
Sack Goldblatt Mitchell

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Employees Retirement System of ABC Rail Limited, Registration Number 0104197 (the "Pension Plan");**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Tony Karkheck,
Senior Vice President

Administrator of the Pension Plan

AND TO: **ABC Rail Limited**
2001 Butterfield Road
Suite 502
Downers Grove, Illinois, 60515

Attention: June Tushar,
Manager, Employee Benefits

Employer

AND TO: **Teamsters Joint Council 79**
255 Morningside Avenue
Scarborough ON

Attention: Peter Mills
President

Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Employees Retirement System of ABC Rail Limited, Registration Number 0194197, be wound up in full effective November 6, 1991.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
2. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
3. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

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FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 5th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a proposal by the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Coats Canada Employees' Pension Plan, Registration No. 288563 (the "Plan");**

TO: **Coats Canada Inc.**
1001 Roselawn Avenue
Toronto, Ontario
M6B 1B8

Attention: Ms. Silvana Morra,
Human Resources Manager
Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under section 69 (1) of the Act that the Plan be wound up in part in relation to those members and former members of the Plan who were employed by Coats Canada Inc. (the "Employer") and who ceased to be employed by the Employer between July 1999 and December 31, 1999, as a result of:

(i) the discontinuance of all or a part of the business of the Employer; or

(ii) the discontinuance of all or a significant portion of the business carried on by the Employer at its Coats Paton Division.

REASONS FOR THE ORDER:

1. The Employer, Coats Canada Inc., is the Employer and Administrator of the Plan.
2. The Plan was created by the merger of the following three pension plans effective December 31, 1997: the Pension Plan for the Employees of Coats Paton Division of Coats Canada Inc., Registration No. 0288563 (the "Coats Paton Plan"), the Pension Plan for the Employees of Coats Canada Inc. and Participating Affiliates, Registration No. 0353839, and the Coats Bell Pension Plan, Registration No. 0221473.
3. The business carried on at the Coats Paton Division was discontinued over the period July 1999 to December 31, 1999. Cowan Wright Limited, consultants for Coats Canada Inc., by letter dated November 12, 2001 to the Pension Plans Branch of the Financial Services Commission of Ontario (FSCO) informed FSCO that the closure of the Coats Patons Division resulted in the termination of 124 members of the Plan over the period July 1999 to December 31, 1999.
4. The Actuarial Report for the Plan as at July 1, 2000 (the "2000 Actuarial Report") showed that as at December 31, 1997 there were 198 active members in the Plan. However, as at July 1, 2000, the total number of active members in the Plan was reduced to 66.
5. Therefore, all or a significant portion of the business carried on by the Employer at its Coats Paton Division was discontinued between July 1999 and December 31, 1999, within the meaning of section 69(1)(e) of the Act.
6. A significant number of members of the Plan ceased to be employed by the Employer as result of the discontinuance of all or part of the business of the Employer at its Coats Paton Division between July 1999 and December 31, 1999, within the meaning of section 69(1)(d) of the Act.
7. Such further and other reasons that may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the Act, to transmit a copy of this Notice of Proposal to Make an Order to the following persons: all members and former members of the Plan who were employed by the Employer and who ceased to be employed by the Employer effective between July 1999 and December 31, 1999.

DATED at North York, Ontario, this 5th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045 (the "Pension Plan");**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Tony Karkheck,
Senior Vice President

Administrator of the Pension Plan

AND TO: **Cold Metal Products Limited**
65 Imperial Street
P.O. Box 66, LCD1
Hamilton ON L8L 7V2

Attention: Soheil Monzavi,
General Manager

Employer

AND TO: **Richter & Partners**
200 King Street West
Suite 1900
Toronto ON M5H 3T4

Attention: Javed Rasool

Trustee in Bankruptcy for Cold Metal Products Limited

AND TO: **The United Steelworkers of America Local, 4444**
1031 Barton Street East, Room 113
Hamilton ON L8L 3E3

Attention: Roy Leslie,
Staff Representative

Union

AND TO: **The United Steelworkers of America Local, 7625**
4115 Ontario East
Montreal PQ H1V 1J7

Attention: Gaetan Pare,
Local President

Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045, be wound up in full effective March 17, 2003.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
2. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganisation of the business of the Employer.**
3. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
4. **All or part of the Employer's business or all or part of the assets of the Employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the Employer's**

Pension Plan who become employees of the person.

5. **Such further reasons as may come to my attention**.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 20th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Pension Plan for the Employees of Greenspoon Bros. Limited, Registration Number 258889 (the "Plan");**

TO: **The Manufacturers Life Insurance Company**
Canadian Pension Operations
500 King North, PO Box 1602
Waterloo ON N2J 4C6

Attention: Ms. Darlene Stegner,
Plan Design Specialist

Administrator

AND TO: Greenspoon Bros. Limited
16 Melanie Drive
Brampton ON L6T 4K9

Attention: Mr. Ira Greenspoon,
Vice-President, Finance

Employer

AND TO: Mandelbaum Spergel Inc.
505 Consumers Road, Suite 200
Toronto ON M2J 4V8

Attention: Mr. Bryan Gelman

Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective April 30, 2003.

REASONS:

1. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
2. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 20th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Pension Plan for Salaried Employees of Finlayson Enterprises Ltd., Registration Number 247593 (the "Plan");**

TO: **The Manufacturers Life Insurance Company**
Canadian Pension Operations
500 King North, PO Box 1602
Waterloo ON N2J 4C6

Attention: Ms. Darlene Stegner,
Plan Design Specialist

Administrator

AND TO: **Finlayson Enterprises Ltd.**
1510B Caterpillar Road
Mississauga ON L4X 2W9

Attention: Ms. Victoria Mayers,
Vice-President and Controller

Employer

AND TO: **Deloitte & Touche Inc.**
Suite 1900,
79 Wellington Street West
PO Box 29, TD Centre
Toronto ON M5K 1B9

Attention: Mr. Wes Treleaven,
Senior Vice-President

Trustee in Bankruptcy

AND TO: **Shiner Zweig Inc.**
10 West Pierce Street, Suite 4
Richmond Hill ON L4B 1B6

Attention: Mr. Wes Treleaven,
Senior Vice-President

Receiver & Manager

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective January 6, 2003.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. The Employer's business has been sold and the successor employer does not provide a pension plan the employees acquired, pursuant to clause 69(1)(f) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

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YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 24th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Salaried Employees of Valeo Engine Cooling, Company, Registration No. 0223404 (the "Plan");**

TO: **Valeo Engine Cooling, Company**
4100 North Atlantic Blvd.
Auburn Hills, MI
48326 USA

Attention: Mr. Jerome Pedretti
Employer and Administrator of the Plan

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to payment of money that is surplus to Valeo Engine Cooling, Company (the "Applicant") out of the Plan in the amount of $1,041,059 as at December 31, 1998, adjusted for any investment income or losses and for costs and expenses incurred in respect of the Plan wind up and distribution of surplus.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements, including benefits and benefit enhancements pursuant to the surplus sharing agreement dated April 30, 2002 (the "Surplus Sharing Agreement") between the Applicant and all members and former members of the Plan (as defined in the application) (the "Participants"), and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASON:

1. Valeo Engine Cooling, Company is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 1998.
3. As at December 31, 1998, the surplus in the Plan was estimated at $1,941,059.
4. There is an Order of the Ontario Superior Court of Justice dated October 31, 2003, that the Plan provides for the payment of surplus, within the meaning subsection 79(3)(b) of the Act, to the Applicant as contemplated by the Surplus Sharing Agreement.
5. The Surplus Sharing Agreement discloses that the Participants' share of the surplus remaining on Plan wind up is to be an amount equal to $900,000 to be allocated among the Participants as set out in Surplus Sharing Agreement. Any amounts of surplus remaining after payment, distribution or other provision for the Participants' share will be payable to the Applicant, adjusted for any income or losses on the investment of the surplus and for all costs and expenses charged against the Plan from the wind up date through to the date of surplus distribution in accordance with section 5 of Surplus Sharing Agreement.
6. The Employer has applied, pursuant to subsections 78(1) and 79(3) of the Act and subsection 8(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation"), for consent of the Superintendent of Financial Services to the payment of the surplus remaining on Plan wind up after distribution of surplus among the Participants in accordance with the Surplus Sharing

Agreement and after payment of all costs and expenses associated with the Plan wind up and surplus distribution, plus investment earnings thereon to the date of surplus payment, as described in the Surplus Sharing Agreement.

7. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 1st day of March, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Paul Litner, Osler Hoskin & Harcourt LLP
Michael Mazzuca, Koskie Minski

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Pension Plan for Employees of Port Colborne Iron Works, Limited who are Members of the Bargaining Unit Represented by the United Steel Workers of America, Registration Number 289439 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck,
Human Resource Services

Appointed Administrator

AND TO: **Port Colborne Iron Works Limited**
PO Box 66
Port Colborne ON L3K 5V7

Attention: Edward B. Magee Jr.,
President

Employer

AND TO: **BDO Dunwoody Limited**
37 Dorothy Street
Welland ON L3B 3V6

Attention: Mr. David Ponting,
Partner

Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective October 25, 2002 through November 12, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. A significant number of members have ceased to be employed by the employer as the result of the discontinuance or reorganization of all of part of business of the employer pursuant to clause 69(1)(d) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 8th day of March, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

Notices of Proposal to Refuse to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under sections 69 and 87 of the Act relating to the **Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915 (the "Plan");**

TO: **DCA EMPLOYEES PENSION COMMITTEE and WILLIAM FITZ**
c/o 112 Reeve Drive
Markham, Ontario
L39 6C7
Requesters

AND TO: **Kerry (Canada) Inc.**
c/o Mr. William R. Coole
Vice President & General Council
Kerry Inc.
100 East Grand Avenue,
Beloit, WI
USA
Employer and Administrator

AND TO **Mr. J. David Vincent**
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
66 Wellington Street West
Suite 4200
Toronto Dominion Bank Tower
Box 20, Toronto Dominion Centre
Toronto, Ontario
M5K 1N6
Counsel to the Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER in respect of the Plan under sections 69, 87 and 18(1)(d) of the Act.

PROPOSED ORDER:

I PROPOSE TO:

1. **REFUSE TO ORDER** that the Plan be wound up effective December 31, 1994, under section 69 of the Act;
2. **REFUSE TO ORDER** that Kerry (Canada) Inc. pay to the pension fund of the Plan all Employer contributions for which a contribution holiday has been taken since January 1, 1985, in connection with the service of employees who joined the Plan either before or after December 31, 1994, together with income that would have been earned by the pension fund of the Plan if those contributions had been made, under section 87 of the Act; **AND**
3. **REFUSE TO ORDER** that registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused under section 18(1)(d) of the Act.

REASONS FOR THE ORDER:

1. **I propose to refuse to order that the Plan be wound up effective December 31, 1994, under section 69 of the Act for the following reasons:**
   a) The Plan was created in 1954 by Canadian Doughnut Company Limited (later DCA Canada Inc). The corporate assets of DCA Canada Inc. were sold to Kerry Ingredients Canada Inc. (later Kerry (Canada) Inc.) effective December 31, 1994. The employees of DCA Canada Inc. ("DCA") were transferred to Kerry Ingredients (Canada) Inc. ("Kerry") as of December 31, 1994 and Kerry assumed the employees of DCA and the assets and liabilities of the Plan as of December 31, 1994. Kerry became the Company

under the terms of the Plan and the Plan and the pension fund continued.

b) There is no evidence that on December 31,1994, there was a cessation or suspension of Employer contributions to the pension fund or that the Employer failed to make contributions to the pension fund as required by the Act or the regulations, as specified in clause 69(1)(a) and (b) of the Act.

c) There is no evidence that on December 31,1994, the Employer (either DCA or Kerry) was bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*, as specified in clause 69(1)(c) of the Act.

d) There is no evidence that on December 31, 1994, a significant number of members of the Pension Plan ceased to be employed by the Employer as the result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer, as specified in clause 69(1)(d) of the Act.

e) There is no evidence that on December 31, 1994, all or a significant portion of the business carried on by the Employer at a specific location was discontinued, as specified in clause 69(1)(e) of the Act.

f) There is no evidence that on December 31, 1994, all or part of the Employer's business or all or part of the assets of the Employer's business were sold, assigned or otherwise disposed of and the person who acquired the business or assets did not provide a pension plan for the members of the Employer's Pension Plan who became employees of the person, as specified in clause 69(1)(f) of he Act.

g) There is no evidence on December 31, 1994, that the liability of the Guarantee Fund was likely to be substantially increased unless the Plan is wound up, that the Plan is a multi-employer pension plan or that any other prescribed event or prescribed circumstance has occurred, as specified in clauses 69(1)(g), (h) or (i) of the Act.

h) Therefore there are no grounds for ordering a wind up, in whole or in part, of the Plan as of December 31, 1994 under section 69 of the Act and the Superintendent has no jurisdiction to make such an order.

i) Such further reasons as may come to my attention.

2. I propose to refuse to order Kerry (Canada) Inc. to pay to the pension fund of the Plan all Employer contributions for which a contribution holiday has been taken since January 1, 1985, in connection with the service of employees who joined the Plan either before or after December 31, 1994, together with income that would have been earned by the pension fund of the Plan if those contributions had been made, under section 87 of the Act, for the following reasons:

a) The Plan was created in 1954 by a plan document ("1954 Plan Document") and a trust agreement ("1954 Trust Agreement"). Neither the 1954 Plan Document nor the 1954 Trust Agreement prohibited the taking of contribution holidays by the Employer.

b) Section 22 of the 1954 Plan Document and Section 11 of the 1954 Trust

Agreement permitted amendments to the Plan and Trust so long as no part of the pension fund was used or diverted for purposes other than for the exclusive benefit of the members [of the Plan] retired members [of the Plan], their beneficiaries or estates and their contingent annuitants.

c) The Plan was amended in 1964 and in 1992 to expressly permit the Employer to take contribution holidays.

d) The amendments to the Plan to allow the Employer to take contribution holidays were permitted by the terms of the Plan and were not prohibited by the Act. Those amendments did not amount to an encroachment upon the trust nor a reduction of accrued benefits. Those amendments did not reduce the corpus of the fund nor did they amount to applying the moneys contained in it to something other than the exclusive benefit of the employees, as was determined by Cory J. for the majority of the Supreme Court of Canada in *Schmidt et al v. Air Products of Canada Ltd. et al*, (1994) 115 D.L.R. (4th) 631 (SCC) at page 664.

e) The former President of DCA Canada Inc. has confirmed that DCA Canada Inc. began to take contribution holidays in 1985.

f) Since the DCA Canada Inc. began to take contribution holidays in 1985, the Plan has contained provision which permitted the Employer to take contribution holidays.

g) There is no evidence that by taking contribution holidays the Plan is not being administered in accordance with the Act, the regulations or the Plan as required by section 87(2)(a) of the Act and therefore the Superintendent has no jurisdiction to make an order under section 87 of the Act.

h) Such further reasons as may come to my attention.

3. I propose to refuse to order that registration of the Revised and Restated Plan Text dated January 1, 2000 and all amendments to the Plan included therein, be refused under section 18(1)(d) of the Act, for the following reasons:

a) The Revised and Restated Plan Text dated January 1, 2000, contains amendments which add a new defined contribution component to the Plan and which permit members of the Plan to convert their defined benefit benefits to defined contribution benefits.

b) The provisions of the Revised and Restated Plan Text dated January 1, 2000, including the amendments adding the defined contribution component to the Plan and permitting members of the Plan to convert to defined contribution benefits, do not conflict with the pension trust and otherwise comply with the provisions of the Act, the regulations and FSCO policies that apply to such conversions.

c) Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

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5160 Yonge Street
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Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at Toronto, Ontario, this 22nd day of April, 2002.

K. David Gordon,
Deputy Superintendent, Pension Division

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under Section 87(1) of the Act respecting the **de Havilland/Brad Salaried Employees Pension Plan, Registration Number 241174 (the "Salaried Plan");**

TO: **Mr. R.N. Priest**
627 The West Mall, Suite 309
Toronto ON M9C 4X5

Applicant

AND TO: **Bombardier Inc.**
123 Garratt Blvd.
Downsview ON M3K 1Y5

Attention: Mr. Andrew Ng,
Pension Specialist

Employer and Administrator of the Salaried Plan

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87(1) of the Act directing Bombardier Inc. (the "Employer ") to transfer pension funds out of the Salaried Plan to a LIRA account of the Applicant.

REASONS FOR THE REFUSAL:

1. The Applicant was a member of the Salaried Plan. In late 1994, the Applicant ceased being a salaried employee and became a unionized employee instead. He became a member of another Pension Plan of the Employer. No further contributions were made to the Salaried Plan on the Applicant's behalf by the Employer, nor did the Applicant make any voluntary contributions to the Salaried Plan.
2. The Applicant was temporarily laid off by the Employer on December 13, 2002, with a recall date set for February 3, 2003. On January 21, 2003, the Applicant notified the company in writing that he was terminating his membership in the Salaried Plan under section 38(1)(c) of the Act and requested that his pension funds in the Salaried Plan be transferred to a LIRA account of his choice.
3. The Applicant in his letter to the Financial Services Commission of Ontario dated February 16, 2003, stated that because he was laid off from employment with the Employer on December 13, 2002, he was entitled to terminate membership in the Plan in accordance with section 38(1)(c) of the Act. As a result, the Applicant claims that since he had terminated membership in the Salaried Plan he is deemed to have terminated employment with the Employer for the purpose of determining benefits under section 38(2) of the Act. The Applicant maintains that his employment with the Employer was terminated for the purposes of section 37(2)(c) of the Act and that therefore he is entitled to have the pension funds transferred out of the Plan to a Locked in Retirement Account ("LIRA") of his choice.
4. Section 38(1)(c) of the Act provides that a member of a pension plan who has been laid off from employment by the employer is entitled to terminate his or her membership in a pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months or for such shorter period as specified in the pension plan.

5. Section 2.4 of the Salaried Plan provides that a member who transfers membership to another registered Pension Plan of the Employer shall immediately cease to accrue further benefits under the Salaried Plan, but shall not be deemed to have terminated employment in accordance with section 8 of the Salaried Plan. The benefits accrued to the member under the Salaried Plan will remain to his credit until his retirement, death or termination of employment or termination of the Salaried Plan. Section 2.4 of the Salaried Plan further provides that continuous employment of such a former member shall, for the purpose of the Plan, count as Total Service but not as Credited Service.
6. In order for a member of a pension plan to terminate his or her membership in the pension plan under section 38(1)(c) of the Act, the member must be laid off from employment by the employer and there must be no contributions paid or required to be paid to the pension fund by or on behalf of the member for 24 consecutive months or for such shorter period as specified in the pension plan.
7. The Applicant in this case was laid off on December 12, 2002 with a recall date set for February 3, 2003. The member returned to employment on that date. On January 21, 2003, when the Applicant notified the company in writing that he was terminating his membership in the Salaried Plan, the Applicant had not been laid off for a period of 24 consecutive months. Therefore, the Applicant was not entitled to terminate his membership in the Salaried Plan under section 38(1)(c) of the Act. As a result the Applicant is not deemed to have terminated his employment under section 38(2) of the Act.
8. Under section 37(1) of the Act a member of a pension plan is only entitled to a deferred pension if he satisfies the qualifications set out in section 37(2) of the Act, one of which is that a member's employment must be terminated. Since the Applicant's employment was not terminated — he was temporarily laid off — he is not entitled to a deferred pension under section 37(3).
9. Under section 42(1) of the Act a former member of a pension plan is only entitled to transfer his pension benefits from the plan if employment is terminated or membership ceases (as set out in Section 38 of the Act).
10. Therefore, the Applicant is not entitled to have his pension benefits transferred from the Salaried Plan to a LIRA of his choice as neither his employment nor his membership have been terminated.
11. The Superintendent of Financial Services (the "Superintendent") can make an order under section 87(1) if he is of the opinion, on reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the Act.
12. For the reasons set out above, the Superintendent is not of the opinion that the Salaried Plan is not being administered in accordance with the Act.
13. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

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IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER AS PROPOSED IN THIS NOTICE.

DATED at Toronto, Ontario, this 10th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pension Division
By Delegated Authority

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the Act respecting a request by Mr. Hugo Jaik relating to **The Electrical Industry of Ottawa Pension Plan, Registration No. 0586396 (the "Plan");**

TO: **Hugo Jaik**
216 Donald B. Munro Drive
Carp ON K0A 1L0

AND TO: **Board of Trustees of The Electrical Industry of Ottawa Pension Plan**
c/o Coughlin & Associates Ltd.

Attention: Lisa Broda,
Associate Consultant
P.O. Box 3517, Stn C
Ottawa ON K1Y 4H5

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER:

(a) requiring the Board of Trustees of The Electrical Industry of Ottawa Pension Plan (the "Board") to recalculate the pension benefits of members, and specifically to recalculate Mr. Jaik's pension benefit; and

(b) requiring that the composition of the Board be amended to comply with the terms of the Plan and declaring that the decisions of the Board improperly constituted are invalid.

REASONS FOR THE REFUSAL:

1. Hugo Jaik is a former member of the Plan.
2. The Plan is administered by the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Board"). It covers members of the International Brotherhood of Electrical Workers, Local 586 ("IBEW, Local 586").
3. Mr. Jaik has been a member of IBEW, Local 586, since 1974 and is receiving a pension from the Plan.
4. Mr. Jaik has requested the Superintendent make an order on the basis that the Plan is not being administered in accordance with its provisions and the Act. Mr Jaik has not indicated specifically what order he is seeking, but has submitted the following in support of his request for an order: the current composition of the Board does not comply with the requirements of the Plan; in the absence of a properly constituted Board there is no authority in the Board to pass amendments and approve expenses; the Plan is not determining the amount of pensions payable under the Plan in accordance with its provisions, resulting in members getting less than what they contributed; and Mr Jaik's pension is not being calculated in accordance with the terms of the Plan, resulting in him getting less than what he is entitled to.
5. The Plan is governed by the following documents: a Trust Agreement, originally entered into on October 1, 1962, now completely restated and replaced by a Restated Agreement and Declaration of Trust entered into as of March 22, 1993, including subsequent amendments (the "Trust Agreement"); the Plan Document, restated January 1, 1994 including subsequent amendments (the "Plan Document"); and by the provisions in collective bargaining agreements between the Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario (the "employers") and the International

Brotherhood of Electrical Workers, Local Union 586 (the "union");

Mr. Jaik's Benefits

6. The Plan is a multi-employer, defined benefit plan where members are entitled to a pension based on a formula set out in the Plan Document. Contributions are limited to Employer contributions as negotiated under collective agreements between the union and the Employers. Members are prohibited under the terms of the Plan Document from contributing to the Plan. Section 7.02 of the Plan Document provides "Members are not required nor permitted to make contributions under the Plan" and section 7.05 provides "A Member may not make Additional Voluntary Contributions to the Plan."
7. When the current Plan Document was completely restated as of January 1, 1994 the formula for the pension benefit was changed from a "Brotherhood System" to a "Quasi-Hour Bank System." Under the "Brotherhood System" all members receive the same pension credits regardless of hours worked. Under the "Quasi-Hour Bank System" members accrue pension credits based on the number of hours worked. The pension formula, as updated in amendment 5 to the 1994 restatement (passed by the Board of Trustees on the 8th day of February 2001), continues the pension accrual based on the "Brotherhood System" for service prior to January 1, 1994, and provides for pension accrual based on the "Quasi-Hour Bank System for service on or after January 1, 1994. It now reads:

11 AMOUNT OF PENSION

11.1 Pension Credits

11.1.1. Service Prior to January 1, 1994

Each Member who retires at the Normal Retirement Date shall be entitled to a Retirement Pension calculated as:

a) where Retirement occurs after January 1, 1988, but prior to July 1, 1988 — $30 per month per year of Credited Service up to December 31, 1982, plus $35.00 per month per year of Credited Service after December 31, 1982, or

b) where Retirement occurs after June 30, 1998 — $35.00 per month per year of Credited Service up to June 30, 1988, plus $40.00 per month per year of Credited Service after June 30, 1988, up to December 31, 1993.

In addition, all active members who received pension credits for the month of December 1993 will receive a 5% increase on all pension credits accumulated prior to January 1, 1994. All inactive and retired members who received pension credits for the month of December 1993 will receive an increase not to exceed the lesser of 3% or the increase in the Consumer Price Index, on all pension credits accumulated prior to January 1, 1994.

Notwithstanding the above, all members who worked at least one hour in 1998, or were disabled prior to January 1, 1999, will also receive a 6% increase on all pension credits accumulated prior to January 1, 1994.

11.1.2. Service After December 31, 1993

a) Members who retired, terminated or died prior to January 1, 1999

Members who are classified as "Hourly Workers" will receive a pension credit of $0.05 per month per hour worked after December 31, 1993.

Members who are classified as "Flat Rate Contributors" will receive a pension credit of $40.00 per month per year of Credited Service after December 31, 1993 up to June 30, 1994, and $62.50 per month per year of Credited Service after June 30, 1994 but prior to January 1, 1999.

b) Members who retired, terminated or died after December 31, 1998

Members who are classified as "Hourly Workers" will receive a pension credit of $0.053 per month per hour worked after December 31, 1993 and before January 1, 1999, and $0.065 per month per hour worked after December 31, 1998.

Members who are classified as "Flat Rate Contributors" will receive a pension credit of $42.40 per month per year of Credited Service after December 31, 1993 up to June 30, 1994, $66.25 per month per year of Credited Service from July 1, 1994 to December 31, 1998, and $81.25 per month per year of Credited Service after December 31, 1998.

11.1.3 Adjustment to Pensions in Pay

All retirees in receipt of a pension from the Plan as of December 31, 1998, will receive an increase not to exceed the lesser of 6% or the increase in the Consumer Price Index, effective January 1, 1999.

8. The description of the pension benefit that accrued for service prior to January 1, 1994 (set out in clause 11.1.1) consists of a flat benefit payable per month per year of service. Mr Jaik claims that trustees have not calculated his benefit correctly for this period of service. He submits the amount of his pension does not reflect the level of contributions he has made to the Plan. Further he submits that the different monthly amounts referred to in clauses 11.1.1 (a) and (b) should be combined when calculating the monthly accrual. For example in 11.1.1. (b) where it states that the pension shall be calculated as $35.00 per month per year Credited Service up to June 30, 1988, plus $40.00 a month per month per year of Credited Service after June 30, 1988, up to December 31, 1993, Mr. Jaik claims he should be credited with $75.00 per month per year of service.
9. Mr. Jaik's interpretation of how the Plan operates and the amount of benefits it provides is in error. As a defined benefit plan, the amount of contributions made (exclusively by the employer in this case) is not used to determine the amount of the pension. The amount of the pension is determined by the formula, in this case, for service prior to January 1, 1994 as set out in s.11.1.1. The formula provides for amounts that are payable with respect to different periods of service and are not intended to be added together for the purposes of calculating the total amount of the pension. In the example referred to in paragraph 8, the benefit of $35.00 per month per year applies when calculating the service applicable for the period up to June 30, 1988 and the ben-

efit of $40.00 a month applies when calculating the service applicable after June 30, 1988 and before January 1, 1994. The amounts are not combined in respect of any period of service.

10. Based on the specific information relating to Mr. Jaik's pension that has been provided to the Superintendent, the Superintendent is unable to conclude there has been an error in calculating his pension.

Composition of the Board of Trustees

11. Mr. Jaik also claims that the Board has not been properly constituted and that its actions are unauthorized.

12. The composition of the Board is set out in section 3.1 of the Trust Agreement:

> **3.01 Trustees**
>
> The operation and administration of the Pension Fund shall be the joint responsibility of the Trustees appointed by the Union and the Trustees appointed by the Electrical Contractors' Association of Ottawa. The number of Trustees shall be eight (8), each of four (4) of whom shall be Union Trustees and the remaining four (4) shall be Employer Trustees.

13. Under section 21.01 of the Plan Document the Administrator of the Plan is the Board in accordance with the terms of the Collective Agreement and Trust Agreement.

14. Section 21.02 of the Plan Document, as restated in Amendment 6, effective January 1, 1994 similarly provides:

> **21.02 Board of Trustees**
>
> The operation and administration of the Pension Fund shall be the joint responsibility of the Trustees appointed by the Union and the Trustees appointed by the Electrical Contractors' Association of Ottawa. The number of Trustees shall be eight (8), each of four (4) of whom shall be Union Trustees and the remaining four (4) shall be Employer Trustees.

15. The composition of the Board has been in compliance with the Trust Agreement, and the Plan Document (as restated by amendment 6), at all material times. All amendments to the Trust Agreement and Plan Document have been made by the duly constituted Board and are therefore valid.

16. The Superintendent does not in any event have the authority to invalidate decisions of a Board of a Pension Plan even if the Board were not validly constituted.

17. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

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Attention: The Registrar

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IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER REQUESTED, AS PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, January 28th, 2004.

K. David Gordon,
Deputy Superintendent, Pension Division

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services, under section 89(2) of the Act, to Refuse to Make an Order pursuant to section 87 of the Act respecting the **Bridgestone/Firestone Canada Inc. Pension Plan — 1992, Registration No. 251348;**

TO: **Mr. Ron Ford**
464 Johnson St.
Midland ON L4R 2Y6
Applicant

AND TO: **Bridgestone/Firestone Canada Inc.**
5770 Hurontario Street, Suite 400
Mississauga ON L5R 3G5

Attention: Ms. Andrea Imanse,
Director, Human Resources
Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87 of the Act requiring the payment of a disability benefit to Ronald Ford (the "Applicant") from the Bridgestone/Firestone Canada Inc. Pension Plan — 1992, Registration No. 251348 (the "Firestone Plan").

REASONS FOR THE PROPOSAL TO REFUSE:

1. The Applicant was employed by Decor Metal Products, a Division of Firestone Inc. ("Decor"). As such, the Applicant was a member of the Pension Plan for Hourly-Rated Employees of Decor Metal Products, A Division of Firestone Canada Inc., Reg. No. C4973 (the "Decor Plan"), a predecessor to the Firestone Plan. He was also a member of a bargaining unit represented by the bargaining agent now known as the National, Automobile, Aerospace, Transportation and General Workers Union of Canada ("CAW").
2. Article 21.3 of the collective agreement between Decor and the CAW covering the Applicant's employment (the "collective agreement") states that "[t]he Employer will provide a Pension as described in the booklet entitled — 'Information — Pension Plan for Hourly-Rated Employees' [the "Booklet"]." The term of the collective agreement containing Article 21.3 is November 17, 1983 to November 14, 1986.
3. Section 6(c) of the Decor Plan effective January 9, 1973 as amended to December 1, 1977 and dated February 1978, states that a member who attains age 55 and completes 10 years of continuous service is entitled to a disability benefit in the event that the member becomes permanently and totally disabled.
4. Section 10 of the Decor Plan contains the power to amend the Plan. In its entirety, section 10(a) reads as follows:

   > The Company expects to continue this Plan indefinitely but, subject to the provisions of any collective bargaining agreement then in effect, the Company reserves the right to amend or terminate the Plan at any time, provided, however, that no amendment shall make it possible for any part of the assets of the Pension Trust Fund to be used for, or diverted to, any purposes other than for the exclusive benefit of Members and the necessary operation of the Pension Trust Fund.

5. TRW Canada Ltd. ("TRW") purchased Decor from Firestone Canada Inc. (Firestone Canada Inc. and its successor Bridgestone/Firestone Canada Inc. shall be referred to as "Firestone") on June 29, 1984. The

Applicant was transferred to TRW as a result of the sale.

6. Under a resolution of the Firestone Board of Directors effective June 29, 1984 and dated October 30, 1984 (the "Resolution"), Firestone was to assume responsibility for the pension benefits accrued to June 29, 1984 under the Decor Plan and further accruals of pension benefits after that date under the Decor Plan were to cease. Firestone was also to transfer all assets and liabilities of the Decor Plan to the predecessor of the Firestone Plan (i.e. the Firestone Canada Inc. Contributing Retirement Income Plan — 1972) which had been established and maintained by Firestone at the time of the Resolution.
7. Under the terms of the Resolution, continuous service of a member of the Decor Plan with TRW on and after June 30, 1984 was to "count for vesting and eligibility for early retirement and disability retirement purposes under the terms of the Decor [Plan] applicable to each Member."
8. The Resolution also amends the terms of the Decor Plan relating to disability benefits (the "Amendment"). The Amendment states that provided that the current collective agreement has not expired on the member's disability retirement date, the member will be entitled to a disability benefit calculated in accordance with the benefit formula in the Decor Plan as at June 29, 1984 and accrued to June 29, 1984. The Amendment also states that where the collective agreement has expired on the member's disability retirement date no disability benefit shall be payable from the Decor Plan.
9. The Applicant became 55 in 1997 and he continued to be employed by TRW until 1999 when he became disabled. The Applicant requested the payment of a disability benefit under the Firestone Plan and in respect of his service to June 29, 1984 with Decor.
10. The Applicant is not entitled to a disability benefit because the Decor Plan (and hence the Firestone Plan) was validly amended by the Amendment to remove entitlement to the disability benefit. The Resolution was passed before the Applicant met the requirements for receipt of the disability benefit because the Applicant was not 55 years old and was not disabled at the time of the Amendment. Therefore, the Amendment does not violate the Act.
11. The Amendment to the disability pension provision of the Decor Plan did not conflict with the collective agreement. The Booklet, and not the actual Decor Plan text, was referenced in the collective agreement. Thus, Firestone was free to amend the Decor Plan text provided the terms of the Decor Plan remained consistent with the terms of the Booklet during currency of the collective agreement. The Amendment explicitly retained the disability benefit until the expiry of the collective agreement and was, therefore, consistent with the requirements of the collective agreement.
12. Any entitlements to a disability benefit that the Applicant may have had did not survive the expiry of the collective agreement because the Applicant did not have a vested or accrued right to a disability benefit prior to the expiry of the collective agreement. Entitlement to the disability benefit did not vest because the Applicant was not 55 years of age and was not disabled at the time of the expiry of the collective agreement.
13. Such and further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 18th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. **CAW**
205 Placer Court
Toronto, Ontario
M2M 3H9

Attn: Mr. Lewis Gottheil,
Legal Counsel

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

Ontario

Notices of Proposal to Refuse to Consent to Applications for Payments of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF an Application under ss. 78(1) of the Act submitted by Gardena Canada Ltd. in respect of the **Melnor Canada Ltd. Retirement Income Plan, Registration Number 449777 (the "Plan");**

TO: **Gardena Canada Ltd.**
100 Summerlea Road
Brampton ON L6T 4X3

Attention: Mr. Jay Sterling,
President

Employer and Administrator of the Plan

NOTICE OF PROPOSAL TO REFUSE TO CONSENT TO APPLICATION

I PROPOSE TO REFUSE TO CONSENT to the application dated March 13, 2002, submitted by Gardena Canada Ltd. for the payment of surplus on the wind up of the Plan to the Employer under subsection 78(1) of the Act.

REASONS FOR PROPOSED REFUSAL:

1. The Plan is a non-contributory defined benefit plan established by Melnor Manufacturing Ltd.("Melnor") effective July 1, 1970 as Melnor Manufacturing Limited Retirement Income Plan (the "1970 Plan").
2. The Plan was funded through a trust agreement made between Beatrice Foods Co. ("Beatrice") and National Trust Company, Limited, dated July 1, 1970 (the "1970 Trust").
3. On November 23, 1992, the name of Melnor was changed to Melnor Canada Ltd. and on October 1, 1997, Melnor became a division of Gardena Canada Ltd., which assumed Melnor's obligations under the Plan.
4. Under the terms of the 1970 Plan, contributions to the Plan were paid into a Trust Fund. The contributions together with the profits of the Trust Fund were held in trust for the purpose of providing retirement benefits to certain employees of Beatrice's Canadian subsidiaries and/or affiliates. Melnor was an affiliate or subsidiary of Beatrice.
5. The Trust Fund was administered in accordance with the terms of the 1970 Trust. The rights and benefits of "Participants" under the 1970 Plan were subject to the terms and provision of the 1970 Trust and "Participants" as defined in the 1970 Plan refers to employees and does not include the Employer.
6. There is no clear statement in the 1970 Trust that makes the Employer a beneficiary or that incorporates the terms of the Plan by reference into the 1970 Trust.
7. The 1970 Trust does not provide for the distribution of surplus on the termination of the Plan. However, the 1970 Plan provides for the payment of surplus to the Employer on the termination of the Plan. Therefore, the terms of the 1970 Plan are inconsistent with the terms of the 1970 Trust, and as a result, the terms of the 1970 Trust prevail. Therefore, the Employer is not entitled to payment of surplus from the Trust Fund.
8. Under the terms of the 1970 Trust, the Employer reserved to itself the power to amend and terminate the Trust Agreement, however this did not permit the Employer to use or divert any part of the Trust Fund for purposes other than for the benefit of employees or to revoke the 1970 Trust. Therefore, the provisions of the 1970 Trust prevail over any subsequent amendments

and inconsistent provisions in the Plan or trust agreement which purport to give the Employer a right to any surplus that might exist upon the wind up of the Plan.

9. Therefore the Employer has not demonstrated that it has complied with section 79(3)(b) of the Act which requires that the Plan provide for payment of surplus to the Employer on wind up of the Plan.
10. Section 78(2) of the Act requires that an employer who applies to the Superintendent for consent to payment of surplus to the employer must transmit notice of the application containing the prescribed information to, *inter alia*, each member and each former member of the plan and to any other individual who is receiving payments out of the pension fund. Section 28(5)(f) of Regulation 909, R.R.O. 1990 as amended ("the Regulation") requires that notice under section 78(2) of the Act include "the contractual authority for surplus reversion." The Financial Services Commission of Ontario (FSCO) Policy S900-509 entitled "Application by an Employer for Payment of Surplus from a Wound-Up Plan" effective April 2, 2001, states that section 28(5)(f) of the Regulation requires that "The Notice of Surplus application must also include a complete historical analysis of all the plan and trust and other documentation that may be relevant to determine whether the plan constitutes a trust."
11. The Employer has not included in the Notice of Surplus application a complete historical analysis of all the Plan and trust and other documents that may be relevant to determine whether the Plan constitutes a trust.
12. Therefore, the Employer has not demonstrated that it has complied with section 78(2) of the Act and subsection 28(5) of Regulation 909 R.R.O. 1990, as amended.
13. Such further and other grounds as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal of Ontario (the "Tribunal") pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, or toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO CONSENT TO THIS APPLICATION, AS PROPOSED IN THIS NOTICE OF PROPOSAL.

DATED at North York, Ontario, this 19th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

Notices of Proposal to Make a Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Retirement Plan for Employees of Peterborough Paper Converters Inc., Registration Number 283358 (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant

Appointed Administrator of the Plan

AND TO: **Peterborough Paper Converters Inc.**
550 Braidwood Avenue
Peterborough ON K9J 1W1

Attention: Mr. Blair Nixon,
Vice-President Finance

Employer

AND TO: **PricewaterhouseCoopers Inc.**
55 King Street West, Suite 900
Kitchener ON N2G 4W1

Attention: Mr. Aldis Makovskis,
Senior Vice-President

Trustee in Bankruptcy

AND TO: **Sack Goldblatt Mitchell**
20 Dundas Street West, Suite 1130
PO Box 180
Toronto ON M5G 2G8

Attention: Mr. Michael Kainer

Counsel for Graphic Communications International Union Local 100-M representing the bargaining unit members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Retirement Plan for Employees of Peterborough Paper Converters Inc., is registered under the Act as Registration Number 283358 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed Morneau Sobeco Administrator of the Plan on July 16, 2002; and
4. The Deputy Superintendent, Pensions, issued a Notice of Proposal on December 12, 2003 to make an order that the Plan be wound up effective February 1, 2002 through March 8, 2002; and
5. On December 5, 2003, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
6. The Administrator's preliminary actuarial valuation of the Plan as at March 8, 2002 reveals a wind up funded ratio for the Plan of approximately 75% and a wind up deficit of approximately $1.7 million; and

7. Effective July 1, 2003, the Administrator reduced pensions in payment from the Plan to 65% of the full benefit until further notice to reflect a further deterioration in the funded ratio of the Plan.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has estimated the wind up funded ratio of the Plan to be 75%.
2. The potential claim against the Guarantee Fund as at the wind up date estimated by the appointed Administrator is of the order of $1,700,000.00.
3. The Employer, Peterborough Paper Converters Inc., was adjudged bankrupt on March 4, 2002.
4. The trustee in bankruptcy has advised the Administrator that there will not be any funds available to the Plan from the estate of the Employer.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 9th day of January, 2004.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Sealcraft Inc., Registration Number 995522;**

TO: **PricewaterhouseCoopers Inc.**
PO Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Ms. Lois Reyes,
Human Resource Services

Administrator

AND TO: **Sealcraft Inc.**
6525 Northam Dr.
Mississauga ON L4V 1J2

Attention: Ms. Joan Shepherd,
Personnel Manager

Employer

AND TO: Schwartz Levitsky Feldman Inc.
1167 Caledonia Road
Toronto ON M6A 2X1

Attention: Mr. Richard Kline

Trustee in Bankruptcy

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Sealcraft Inc. (the "Plan"), is registered under the Act as Registration Number 995522; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on December 23, 2002; and
4. On January 9, 2004, the Superintendent of Financial Services issued an Order that the Plan is to be wound up effective October 16, 2002; and
5. On January 16, 2004, the Administrator filed a wind up report for the Plan effective October 16, 2002, which report is currently under review by staff; and
6. On January 16, 2004, the Administrator also filed an Application for a Declaration that the Guarantee Fund applies to the Plan, based on the said wind up report;

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has determined the wind up funded ratio of the Plan to be 52.1%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the appointed Administrator to be $410,800.00.
3. The Employer, Sealcraft Inc., was assigned into bankruptcy on October 28, 2002.
4. The trustee in bankruptcy for Sealcraft Inc. had advised the Administrator that there are no funds available for distribution to the ordinary unsecured creditors.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

6. If funds become available for the Plan from the estate of Sealcraft Inc., the Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
7. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 10th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

Orders that Pension Plans be Wound Up

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to **The Pension Plan for The Employees of RNG Equipment Inc., Registration Number 491126 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Domenic Muro,
Compliance Support Specialist

Appointed Administrator

AND TO: **RNG Equipment Inc.**
Bay Wellington Tower, BCE Place
181 Bay St.
Box 825, Suite 2040
Toronto ON M5J 2T3

Attention: Ms. Caryn McNeil,
Administrator

Employer

AND TO: **Blake, Cassels & Graydon LLP**
Box 25, Commerce Court West
199 Bay Street
Toronto ON M5L 1A9

Attention: Ms. Kathryn M. Bush

Counsel for the Trustee in Bankruptcy of RNG Group Inc. (formerly RNG Equipment Inc.)

ORDER

On or about September 10, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated September 9, 2003, to Make an Order that the Plan be wound up in whole effective November 30, 2001, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective November 30, 2001.

REASONS:

1. There was a cessation of Employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 10th day of November, 2003.

Tom Golfetto
Director, Pension Plans Branch
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Alderbrook Industries Limited Pension Plan, Registration Number 0574764 (the "Pension Plan");**

TO: **Mackenzie Financial Corporation**
150 Bloor Street West
Suite M111
Toronto ON M5S 3B5

Attention: David Lin,
Pension Officer

Administrator of the Pension Plan

AND TO: **Alderbrook Industries Limited**
885 Sandy Beach Road
Pickering ON L1W 3N6

Attention: Linda Parker,
Human Resources Manager

Employer

ORDER

On the 20th day of October 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 20th day of October, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Alderbrook Industries Limited Pension Plan, Registration Number 0574764.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Alderbrook Industries Limited Pension Plan, Registration Number 0574764, be wound up in whole effective March 31, 2002, for the following reasons:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
3. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Deloitte & Touche Inc.
BCE Place
181 Bay Street
Suite 1400
Toronto ON M5J 2V1

Attention: Huey Lee,
Financial Advisory Services

Receiver and Manager of Alderbrook Industries Limited

AND TO: **Shiner Kideckel Zweig Inc.**
10 West Pearce Street
Suite 4
Richmond Hill ON L4B 1B6

Attention: Joel Kideckel

Trustee in Bankruptcy of Alderbrook Industries Limited

DATED at Toronto, Ontario, this 1st day of December, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Registered Pension Plan for Cunningham Foundry, A Division of Quint Industries Inc., Registration Number 0432450 (the "Pension Plan");**

TO: **Maritime Life Assurance Company**
7 Maritime Place
PO Box 1030
Halifax NS B3J 2X5

Attention: Kari LeLacheur,
Legislative Advisor,
Pension Services

Administrator of the Pension Plan

AND TO: **Cunningham Foundry, A Division of Quint Industries Inc.**
21 Yale Cres.
St. Catharines ON L2R 2Y6

Attention: Brian Crawford,
Chief Financial Officer

Employer

ORDER

On the 22nd day of September 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 22nd day of September, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Registered Pension Plan for Cunningham Foundry A Division of Quint Industries Inc., Registration Number 0432450.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Registered Pension Plan for Cunningham Foundry, A Division of Quint Industries Inc., Registration Number 0432450, be wound up in whole effective July 31, 2002, for the following reasons:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
3. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
4. **All or a significant portion of the business carried on by the employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

KPMG Inc.
PO Box 976
21 King Street West, Suite 510
Hamilton ON L8N 3R1

Attention: John Athanasiou,
Corporate Recovery Specialist

Trustee in Bankruptcy of Cunningham Foundry, A Division of Quint Industries Inc.

AND TO: **CAW Local 523**
16 Steel Street
Welland ON L3B 3L9

Attention: Gord Chatwin

Union

DATED at Toronto, Ontario, this 1st day of December, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to an Application under 78(1) of the Act submitted by Weavexx Corporation, in respect of the **Retirement Income Plan for Arnprior Hourly-Paid Employees of Weavexx Corporation, Registration No. 0264655 (the "Plan");**

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the Plan passed by the Board of Directors of Weavexx Corporation on September 23, 1999 (the "Plan Amendment");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Approve the Wind Up Report submitted by Weavexx Corporation in respect of the Plan dated September 5, 1997 (the "Report");

AND IN THE MATTER OF a Notice of Proposal to issue an Order under section 88 of the Act;

AND AS PURSUANT TO a Transfer and Assignment of Pension Plan agreement entered into between Weavexx Corporation and BTR Canada Inc. on December 2, 1999 under which BTR Canada Holdings Inc. became the Employer and Administrator of the Plan;

AND AS PURSUANT TO a Transfer and Assignment agreement entered into between BTR Canada Holdings, Inc. and BTR Canada Finance Inc. on March 1, 2003 under which BTR Canada Finance Inc. is now the Employer and Administrator of the Plan.

TO: **BTR Canada Finance Inc.**
c/o Ms. Allyn Jerome
Benefit Specialist
Invensys Inc.
33 Commercial St. B52-S1
Foxboro MA 02035

Employer and Administrator of the Plan

ORDER

On or about May 30, 2003, the Superintendent of Financial Services ("Superintendent") issued a Notice of Proposal (the "Notice of Proposal") to the Administrator of the Retirement Income Plan for Arnprior Hourly-Paid Employees of Weavexx Corporation, wherein he proposed to:

1. **REFUSE TO CONSENT** to the application dated September 22, 1999 submitted by Weavexx Corporation for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act (the "Application");
2. **REFUSE TO CONSENT** to register the Plan Amendment dated September 23, 1999;
3. **REFUSE TO APPROVE** the wind up report dated September 5, 1997, pursuant to subsection 70(5) of the Act; and
4. **ORDER** that the Administrator of the Plan prepare and deliver a complete wind up report that complies with subsection 79(4) of the Act, the "1957 Plan" (The New Retirement Income Plan for the Employees of Kenwood Mills Limited, established in 1957 by a predecessor employer), and the "1958 trust agreement" (a predecessor plan trust agreement entered into between Kenwood Mills Limited and the Montreal Trust Company dated March 21, 1958) by providing for the distribution of the surplus plan assets to members, former members,

and other persons entitled to benefits pursuant to sections 88(2)(c) and 88(3) of the Act;

ON July 3, 2003, BTR Canada Finance Inc. filed a request for hearing with the Financial Services Tribunal (the "Tribunal");

ON November 12, 2003, BTR Canada Finance Inc. withdrew its request for a hearing by the Tribunal.

I THEREFORE:

1. **REFUSE TO CONSENT** to the application dated September 22, 1999 submitted by Weavexx Corporation for the payment of surplus on the wind up of the Plan to the Employer under subsection 78(1) of the Act;
2. **REFUSE TO CONSENT TO** register the Plan Amendment dated September 23, 1999;
3. **REFUSE TO APPROVE** the wind up report dated September 5, 1997 pursuant to subsection 70(5) of the Act;
4. **ORDER** that the Administrator of the Plan prepare and deliver a complete wind up report that complies with subsection 79(4) of the Act, the 1957 Plan, and the 1958 trust agreement by providing for the distribution of the surplus plan assets to members, former members, and other persons entitled to benefits pursuant to sections 88(2)(c) and 88(3) of the Act.

   The new wind up report shall be delivered to the Superintendent within 60 days of the date of this Order.

DATED at North York, Ontario, December 3rd, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Copy: Mr. Paul Timmins,
Watson Wyatt Canada

Ms. Dona Campbell,
Sack Goldblatt Mitchell

Ms. Alexandra Dagg,
Union of Needletrades,
Industrial & Textile Employees — CLC

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Pension Plan for Employees of Outboard Marine Corporation of Canada Ltd., Registration Number 232967 (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Debbie Gallagher, Consultant

Appointed Administrator

AND TO: **Outboard Marine Corporation of Canada**
100 Sea-Horse Drive
Waukegan IL 60085

Attention: Ms. Darlene Lomax, Manager Benefits Administration

Employer

AND TO: **Alex D. Moglia & Associates**
1325 Remington Rd. STE H
Schaumberg IL 60173

Attention: Mr. Alex D. Moglia

Trustee in Bankruptcy

AND TO: **Ernst & Young**
35 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5

Attention: Mr. Greg Adams

Receiver

ORDER

On or about October 16, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated October 16, 2003 to Make an Order that the Plan be wound up in whole effective August 1, 2000 through December 20, 2000, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective August 1, 2000 through December 20, 2000.

REASONS:

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer pursuant to the clause 69(1)(d) of the Act.
4. All or a significant part of the business has been discontinued at a specific location, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 11th day of December, 2003.

Tom Golfetto,
Director, Pension Plans Branch
By Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Retirement Plan for Employees of Outboard Marine Corporation of Canada Ltd., Registration Number 232975 (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Debbie Gallagher, Consultant

Appointed Administrator

AND TO: **Outboard Marine Corporation of Canada**
100 Sea-Horse Drive
Waukegan IL 60085

Attention: Ms. Darlene Lomax, Manager Benefits Administration

Employer

AND TO: **Ernst & Young**
35 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5

Attention: Mr. Greg Adams

Receiver

AND TO: **Alex D. Moglia & Associates**
1325 Remington Rd. STE H
Schaumberg IL 60173

Attention: Mr. Alex D. Moglia

Trustee in Bankruptcy

ORDER

On or about October 16, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated October 16, 2003 to Make an Order that the Plan be wound up in whole effective August 1, 2000 through April 9, 2001, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective August 1, 2000 through April 9, 2001.

REASONS:

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer pursuant to the clause 69(1)(d) of the Act.
4. All or a significant part of the business has been discontinued at a specific location, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 17th day of December, 2003.

Tom Golfetto,
Director, Pension Plans Branch
By Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting **Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339 (the "Pension Plan");**

TO: **Sun Life Assurance Company of Canada**
227 King Street South
Waterloo ON N2J 4C5

Attention: Lisa Wroblewski,
Account Representative

Administrator of the Pension Plan

AND TO: **General Publishing Co. Limited**
895 Don Mills Road
Suite 400, 2 Park Centre
Toronto ON M3C 1W3

Attention: Mary Hainey,
Administrator

Employer

ORDER

On the 7th day of November, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 7th day of November, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339, be wound up in whole effective August 20, 2002, for the following reasons:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
3. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Deloitte & Touche Inc.
79 Wellington Street West
P.O. Box 1900
Toronto Dominion Centre
Toronto ON M5K 1B9

Attention: Rob Biehler,
Vice-President

Trustee in Bankruptcy for General Publishing Co. Limited

DATED at Toronto, Ontario, this 9th day of January, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Retirement Plan for Salaried Employees of MIL Systems Engineering, Registration Number 684902 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Ms. Sharon A. Carew,
Senior Manager

Appointed Administrator

AND TO: **MIL Systems Engineering**
1150 Morrison Drive
Suite 200
Ottawa ON K2H 8S9

Attention: Mr. Garry M. Skinner,
VP Finance & Administration

Employer

AND TO: **Groupe Thibault Van Houtte & Associes Ltee**
70 Rue Dalhousie, Bureau 100
Quebec City, Quebec G1K 4B2

Attention: Mr. Patrice Van Houtte

Trustee in Bankruptcy

ORDER

On or about September 17, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated September 17, 2003, to Make an Order that the Plan be wound up in whole effective November 2, 2001, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective November 2, 2001.

1. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
2. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer pursuant to clause 69(1)(d) of the Act.

DATED at North York, Ontario, this 9th day of January, 2004.

Tom Golfetto,
Director, Pension Plans Branch
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Pension Plan for Employees of Sealcraft Inc., Registration Number 995522 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Ms. Lois J. Reyes,
Manager

Appointed Administrator

AND TO: **Sealcraft Inc.**
6525 Northam Dr.
Mississauga ON L4V 1J2

Attention: Ms. Joan Shepherd,
Personnel Manager

Employer

AND TO: **Schwartz Levitsky Feldman Inc.**
1167 Caledonia Road
Toronto ON M6A 2X1

Attention: Mr. Richard Kline

Trustee in Bankruptcy

ORDER

On or about September 17, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated September 17, 2003, to Make an Order that the Plan be wound up in whole effective October 16, 2002, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective October 16, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer pursuant to clause 69(1)(d) of the Act.

DATED at North York, Ontario, this 9th day of January, 2004.

Tom Golfetto,
Director, Pension Plans Branch
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting **Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183 (the "Pension Plan");**

TO: **London Life Insurance Company**
255 Dufferin Avenue
London ON N6A 4K1

Attention: Darlene Sundercock,
Wind-up Specialist
Group Retirement Services

Administrator of the Pension Plan

AND TO: **Cobra Machine Tool co. Inc.**
11600 County Road 42
R.R. #2
Tecumseh ON N8N 2M1

Attention: Charles Roberts,
General Manager

Employer

ORDER

On the 7th day of November 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 7th day of November, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183, be wound up in whole effective May 10, 2002, for the following reasons:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

KPMG Inc.
140 Fullarton Street
Suite 1200
P.O. Box 2305
London ON N6A 5P2

Attention: Stephen N. Cherniak, CA, CIRP
Vice President

Trustee in Bankruptcy of Cobra Machine Tool Co. Inc.

DATED at Toronto, Ontario, this 12th day of January, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to Refuse to Make an Order under section 87(1) of the Act respecting the **de Havilland/Brad Salaried Employees Pension Plan, Registration No. 241174 (the "Salaried Plan");**

TO: **Mr. R.N. Priest**
627 The West Mall, Suite 309
Toronto ON M9C 4X5
Applicant

AND TO: **Bombardier Inc.**
123 Garratt Blvd.
Downsview ON M3K 1Y5

Attention: Mr. Andrew Ng,
Pension Specialist
Employer and Administrator of the Salaried Plan

ORDER

On or about the 10th day of December, 2003, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal (the "Notice of Proposal") to the Applicant and the Administrator of the Salaried Plan, Registration No. 241174, wherein he proposed to:

1. **REFUSE TO MAKE AN ORDER** under section 87(1) of the Act directing Bombardier Inc. (the "Employer") to transfer pension funds out of the Salaried Plan to a LIRA account of the Applicant.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time frame prescribed by subsection 89(6) of the Act.

THEREFORE the Superintendent:

REFUSES TO MAKE AN ORDER under section 87(1) of the Act directing Bombardier Inc. (the "Employer") to transfer pension funds out of the Salaried Plan to a LIRA account of the Applicant.

DATED at Toronto, Ontario, this 29th day of January 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Revised Pension Plan for Employees of Pelee-Delta Electric Inc., Registration Number 363218;**

TO: **Canada Life Assurance Company**
330 University Avenue
Toronto ON M5G 1R8

Attention: Ms. Milica Stojsin
Administrator

AND TO: **Pelee-Delta Electric Inc.**
P.O. Box 2049
Sarnia Stn. Main
Sarnia ON N7T 7L3

Attention: Ms. Paula Pope
Employer

AND TO: **Funtig & Associates Inc.**
484 Pelissier St.
Windsor ON N9A 4K9

Attention: Mr. Peter Wasylyk
Trustee in Bankruptcy

ORDER

On or about the 1st day of December, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated November 25, 2003, to Make an Order pursuant to subsection 69(1) of the Act, that the Revised Pension Plan for Employees of Pelee-Delta Electric Inc., Registration Number 363218 (the "Plan"), be wholly wound up effective November 13, 2001.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Plan be wholly wound up effective November 13, 2001.

REASONS:

1. There was a cessation or suspension of contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. There was a failure of the Employer to make contributions to the pension fund pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada) pursuant to clause 69(1)(c) of the Act.

DATED at Toronto, Ontario, this 29th day of January, 2004.

Tom Golfetto,
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Retirement Plan for Employees of Peterborough Paper Converters Inc., Registration No. 283358 (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant

Administrator

AND TO: **Peterborough Paper Converters Inc.**
550 Braidwood Avenue
Peterborough ON K9J 1W1

Attention: Mr. Blair Nixon,
Vice-President, Finance

Employer

AND TO: **Sack Goldblatt Mitchell**
20 Dundas Street West, Suite 1130
PO Box 180
Toronto ON M5G 2G8

Attention: Mr. Michael Kainer

Counsel for Graphic Communications International Union Local 100-M representing the bargaining unit members of the Plan

AND TO: **PricewaterhouseCoopers Inc.**
55 King Street West, Suite 900
Kitchener ON N2G 4W1

Attention: Mr. Aldis Makovskis,
Senior Vice-president

Trustee in Bankruptcy

ORDER

On or about the 12th day of December, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order pursuant to subsection 69(1) of the Act, that the Plan be wholly wound up effective February 1, 2002 through March 8, 2002.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Plan be wholly wound up effective February 1, 2002 through March 8, 2002.

REASONS:

1. Cessation or suspension of the Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members of the Pension Plan have ceased to be employed by the Employer as a result of the discontinuance or reorganization of all or part of the business of the Employer, pursuant to clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at Toronto, Ontario, this 29th day of January, 2004.

Tom Golfetto,
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting **Pension Plan for Bono Construction Limited, Registration Number 0499608 (the "Pension Plan");**

TO: **The Canada Life Assurance Company**
330 University Avenue
Toronto ON M5G 1R8

Attention: Milica Stojsin,
Plan Wind-up Consultant
Investments & Pensions

Administrator of the Pension Plan

AND TO: **Bono General Construction Limited**
899 Nebo Road
R.R. #2, P.O. Box 51
Hannon ON L0R 1P0

Attention: Joe Muraca,
Office Manager

Employer

ORDER

On the 12th day of December, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 12th day of December, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Pension Plan for Bono Construction Limited, Registration Number 0499608.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for Bono Construction Limited, Registration Number 0499608, be wound up in whole effective December 31, 2000, for the following reasons:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
3. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PricewaterhouseCoopers Inc.
145 King Street West
Toronto ON M5H 1V8

Attention: Clark Lonergan

Trustee in Bankruptcy for Bono General Construction Limited

DATED at Toronto, Ontario, this 9th day of March, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Consents to Payments of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Dresser Canada, Inc. Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration Number 0220723;**

TO: **Halliburton Group Canada Inc.**
333 – 5th Avenue S.W.
Suite 1000
Calgary, Alberta
T2P 3B6

Attention: Mr. Ron Ruckaber,
Senior Benefits Advisor

Applicant and Employer

CONSENT

On or about October 29, 2003, the Superintendent of Financial Services caused to be served on Halliburton Group Canada Inc. a Notice of Proposal dated October 29, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Dresser Canada, Inc. Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration Number 0220723 (the "Plan"), to Halliburton Group Canada Inc. in the amount of $932,914 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan.

The Notice of Proposal was served on the Applicant only. The Applicant has certified that they are not requesting, nor will request a hearing as prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Dresser Canada, Inc. Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration Number 0220723, of $932,914 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan, to Halliburton Group Canada Inc.

DATED at Toronto, Ontario, this 13th day of November, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Mr. Greg Winfield, McCarthy Tetrault

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration Number 0474346;**

TO: **Halliburton Group Canada Inc.**
333 – 5th Avenue S.W.
Suite 1000
Calgary, Alberta
T2P 3B6

Attention: Mr. Ron Ruckaber,
Senior Benefits Advisor

Applicant and Employer

CONSENT

On or about October 29, 2003, the Superintendent of Financial Services caused to be served on Halliburton Group Canada Inc. a Notice of Proposal dated October 29, 2003 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration Number 0474346 (the "Plan"), to Halliburton Group Canada Inc. in the amount of $139,478 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan.

The Notice of Proposal was served on the Applicant only. The Applicant has certified that they are not requesting, nor will request a hearing as prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration Number 0474346, of $139,478 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan, to Halliburton Group Canada Inc.

DATED at Toronto, Ontario, this 13th day of November, 2003

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Mr. Greg Winfield, McCarthy Tetrault

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Uniroc Mfg., Division of Atlas Copco Canada Inc. Canadian Non-Union Employees' Pension Plan, Registration No. 513457;**

TO: **Atlas Copco Canada Inc.**
Secoroc, a Division of
Atlas Copco Canada Inc.
1157 Blair Road
Burlington ON L7M 1P9

Attention: Mr. Jeff Hagar,
Vice President Finance

Applicant and Employer

CONSENT

On or about October 17, 2003, the Superintendent of Financial Services caused to be served on Atlas Copco Canada Inc. a Notice of Proposal dated October 17, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Uniroc Mfg., Division of Atlas Copco Canada Inc. Canadian Non-Union Employees' Pension Plan, Registration No. 513457 (the "Plan"), to Atlas Copco Canada Inc. in the amount of $703,618.30 as at August 26, 1994, plus investment earnings and losses thereon to the date of payment.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Uniroc Mfg., Division of Atlas Copco Canada Inc. Canadian Non-Union Employees' Pension Plan, Registration No. 513457, of $703,618.30 as at August 26, 1994, plus investment earnings and losses thereon to the date of payment, to Atlas Copco Canada Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that provision has been made for the pension benefits of one unlocated Plan member and that the employees' share of the surplus has been distributed to the members, former members and others as set out in the application.

DATED at Toronto, Ontario, this 1st day of December, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Copy: Mr. Leon Caron,
Atlas Copco Canada Inc.

Ms. Susan L. Nickerson,
McMillan Binch LLP

Mr. Michael Mazzuca,
Koskie Minsky

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998;**

TO: **PricewaterhouseCoopers Inc.**
c/o Ayesworth Thompson
Phelan O'Brien
222 Bay Street
Ernst & Young Tower
PO Box 124, 18th Floor
Toronto Dominion Centre
Toronto ON M5K 1H1

Attention: Peter R. Welsh

Applicant

CONSENT

On or about October 20, 2003, the Superintendent of Financial Services caused to be served on PricewaterhouseCoopers Inc., Trustee in Bankruptcy for the Estate of AM International Inc., a Notice of Proposal dated October 20, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998 (the "Plan"), to PricewaterhouseCoopers Inc., Trustee in Bankruptcy for the Estate AM International Inc. in the amount of $154,861 as at March 31, 2002, plus investment earnings thereon to the date of payment.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998, of $154,861 as at March 31, 2002, plus investment earnings thereon to the date of payment, to PricewaterhouseCoopers Inc., Trustee in Bankruptcy for the Estate of AM International Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the payment of members' share of the negotiated surplus has been paid.

DATED at Toronto, Ontario, this 9th day of December, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

cc: Tony Karkheck, PricewaterhouseCoopers Inc.

cc: Dona Campbell, Sack Goldenblatt Mitchell

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited Registration Number 0355404;**

TO: **United Dominion Industries Corporation**
c/o Mr. Jeffrey L. Nugent
SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277
U.S.A.

Attention: Jeffrey L. Nugent

Applicant and Employer

CONSENT

On or about October 31, 2003, the Superintendent of Financial Services caused to be served on United Dominion Industries Corporation an amended Notice of Proposal dated October 31, 2003 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration number 0355404 (the "Plan"), to United Dominion Industries Corporation in the amount of $2,204,469 as at June 30, 2000, plus investment earnings thereon to the date of payment less the expenses related to the wind up of the Plan and the distribution of surplus.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration Number 0355404, of $2,204,469 as at June 30, 2000, plus investment earnings thereon to the date of payment less the expenses related to the wind up of the Plan and the distribution of surplus to United Dominion Industries Corporation.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 18th day of December, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Mr. Douglas Rienzo,
Osler, Hoskin & Harcourt LLP

Mr. Jeremy Forgie,
Blake, Cassels & Graydon LLP

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Britrail Travel International (Canada) Retirement Plan, Registration Number 0404095;**

TO: **Rail Europe Group Inc.**
44 South Broadway
White Plains, New York 10601

Attention: Mr. Duncan Still,
Chief Financial Officer

Applicant and Employer

CONSENT

On or about October 31, 2003, the Superintendent of Financial Services caused to be served on Rail Europe Group Inc. a Notice of Proposal dated October 31, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Britrail Travel International (Canada) Retirement Plan, Registration Number 0404095 (the "Plan"), to Rail Europe Group Inc. in the amount of $644,801.24, as at June 30, 1996, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Britrail Travel International (Canada) Retirement Plan, Registration Number 0404095, of $644,801.24, as at June 30, 1996, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me in writing of the distribution of the members' share of surplus in accordance with the Surplus Distribution Agreement.

DATED at Toronto, Ontario, this 9th day of January, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Ms. Reesha Hosein,
Blake, Cassels & Graydon LLP

Ms. Lorraine Mahoney,
Allan Smart Services

Mr. Robert Southern

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479;**

TO: **ExxonMobil Chemical Films Canada Ltd.**
321 University Avenue
Belleville, Ontario K8N 5A2

Attention: Robert Hallsworth,
Plant Manager

Applicant and Employer

CONSENT

On or about December 19, 2003, the Superintendent of Financial Services caused to be served on ExxonMobil Chemical Films Canada Ltd. a Notice of Proposal dated December 19, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479 (the "Plan"), to ExxonMobil Chemical Films Canada Ltd. in the amount of $800,000 estimated as at October 31, 1986, plus investment returns thereon to the date of payment less half of the expenses associated with the wind-up of the Plan and distribution of surplus therefrom, as contemplated by the surplus sharing agreement, dated March 26, 2003 (the Surplus Distribution Agreement).

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479, of $800,000, to ExxonMobil Chemical Films Canada Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all payments to which members, former members, and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

DATED at Toronto, Ontario, this 10th day of February, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Evan Howard, Osler Hoskin & Harcourt LLP
Ari Kaplan, Koskie Minsky

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479**;

TO: **ExxonMobil Chemical Films Canada Ltd.**
321 University Avenue
Belleville, Ontario K8N 5A2

Attention: Robert Hallsworth,
Plant Manager

Applicant and Employer

AMENDED CONSENT

On or about December 19, 2003, the Superintendent of Financial Services caused to be served on ExxonMobil Chemical Films Canada Ltd. a Notice of Proposal dated December 19, 2003 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479 (the "Plan"), to ExxonMobil Chemical Films Canada Ltd. in the amount of $800,000 estimated as at October 31, 1986, plus investment returns thereon to the date of payment less half of the expenses associated with the wind-up of the Plan and distribution of surplus therefrom, as contemplated by the surplus sharing agreement, dated March 26, 2003 (the Surplus Distribution Agreement).

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479, of $800,000 estimated as at October 31, 1986 plus investment returns thereon to the date of payment less half of the expenses associated with the wind up of the Plan and distribution of surplus therefrom, as contemplated by the Surplus Distribution Agreement, to ExxonMobil Chemical Films Canada Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all payments to which members, former members, and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

DATED at Toronto, Ontario, this 20th day of February, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Evan Howard, Osler Hoskin & Harcourt LLP
Ari Kaplan, Koskie Minsky

Declarations that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the *Pension Benefits Act*

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Retirement Plan for Employees of Peterborough Paper Converters Inc., Registration Number 283358 (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant

Appointed Administrator of the Plan

AND TO: **Peterborough Paper Converters Inc.**
550 Braidwood Avenue
Peterborough ON K9J 1W1

Attention: Mr. Blair Nixon,
Vice-President Finance

Employer

AND TO: **PricewaterhouseCoopers Inc.**
55 King Street West, Suite 900
Kitchener ON N2G 4W1

Attention: Mr. Aldis Makovskis,
Senior Vice-President

Trustee in Bankruptcy

AND TO: **Sack Goldblatt Mitchell**
20 Dundas Street West, Suite 1130
PO Box 180
Toronto ON M5G 2G8

Attention: Mr. Michael Kainer

Counsel for Graphic Communications International Union Local 100-M representing the bargaining unit members of the Plan

DECLARATION

WHEREAS:

1. The Retirement Plan for Employees of Peterborough Paper Converters Inc., is registered under the Act as Registration Number 283358 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed Morneau Sobeco Administrator of the Plan on July 16, 2002; and
4. On January 29, 2004, the Superintendent of Financial Service issued an Order that the Plan be wound up effective February 1, 2002 through March 8, 2002; and
5. On December 5, 2003, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
6. On January 9, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan; and
7. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received with respect to the Notice of Proposal to Make the Declaration; and

8. The Administrator's preliminary actuarial valuation of the Plan as at March 8, 2002, reveals a wind up funded ratio for the Plan of approximately 75% and a wind up deficit of approximately $1.7 million; and
9. Effective July 1, 2003, the Administrator reduced pensions in payment from the Plan to 65% of the full benefit until further notice to reflect a further deterioration in the funded ratio of the Plan; and
10. The Administrator is prepared to restore pensions to the level provided for under the Guarantee Fund provisions of the Act if the Guarantee Fund is declared to be applicable to the Plan;

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has estimated the wind up funded ratio of the Plan to be 75%.
2. The potential claim against the Guarantee Fund as at the wind up date estimated by the appointed Administrator is of the order of $1,700,000.00.
3. The Employer, Peterborough Paper Converters Inc., was adjudged bankrupt on March 4, 2002.
4. The trustee in bankruptcy has advised the Administrator that there will not be any funds available to the Plan from the estate of the Employer.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

DATED at North York, Ontario, this 9th day of March, 2004.

Tom Golfetto,
Director, Pension Plans Branch

Allocations of Money from the Pension Benefits Guarantee Fund

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the Act respecting the **Gallaher Thorold Paper Co. Salaried Pension Plan, Registration No. 1039999 (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant

Appointed Administrator of the Plan

AND TO: **Gallaher Thorold Paper Co.**
67 Front Street North
Thorold ON L2V 3Z7

Attention: Mr. David Rennie,
Vice President, Human Resources

Employer

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Mr. Felix Hsu,
Manager

Trustee in Bankruptcy for Gallaher Thorold Paper Co.

ALLOCATION

WHEREAS on the 29th day of May, 2002, a declaration was issued pursuant to sections 83 and 89 of the Act that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $731,700 determined as of August 1, 2003 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 14th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act respecting the **Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc. (the "Pension Plan") Registration Number 0335802;**

TO: **Morneau Sobeco**
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Robin Pond, MBA, CFA
Partner

Administrator of the Pension Plan

SECOND INTERIM ALLOCATION

WHEREAS on December 17, 2002, I declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall further allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $34,400,000 (Second Interim Allocation) which together with the Ontario assets of the Pension Plan, will partially provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 18th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act respecting the **Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada (the "Pension Plan"), Registration Number 0335810;**

TO: **Morneau Sobeco**
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Robin Pond, MBA, CFA
Partner

Administrator of the Pension Plan

SECOND INTERIM ALLOCATION

WHEREAS on December 17, 2002, I declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall further allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $8,600,000 (Second Interim Allocation) which together with the Ontario assets of the Pension Plan, will partially provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 18th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

FINANCIAL SERVICES TRIBUNAL ACTIVITIES

Appointments of Financial Services Tribunal Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
McNairn, Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
Corbett, Anne (Vice-Chair Acting)		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
Ashe, Kevin		
O.C. 1510/2002	September 26, 2002	September 25, 2005
Bharmal, Shiraz Y.M.		
O.C. 1511/2002	September 9, 2002	September 8, 2005
Erlichman, Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Gavin, Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
Litner, Paul W.		
O.C. 1512/2002	September 9, 2002	September 8, 2005
Moore, C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
Short, David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
Vincent, J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**

****Or on the day FSCO/OSC merges, if earlier**

Pension Hearings Before the Financial Services Tribunal

Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration Number 0474205, and the Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration Number 0595371, into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration Number 338491. The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of a pre-hearing conference. At the settlement conference the parties agreed to adjourn the matter *sine die* pending discussions between the parties.

On February 11, 2003, counsel for the Superintendent requested a pre-hearing conference be scheduled as the parties were unable to resolve the issues in this matter. At the pre-hearing conference on May 12, 2003, the parties stated they would contact the Registrar to resume the pre-hearing conference if they did not resolve the issues at a settlement meeting on May 26, 2003. On June 20, 2003, the parties advised that they expect the settlement discussions to continue.

The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. At the settlement conference the matter was adjourned *sine die*.

On February 7, 2003, counsel for the Superintendent requested the pre-hearing conference be reconvened. The pre-hearing conference was held on April 17, 2003. At the hearing on July 14, 2003, the panel reserved its decision.

Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an order in respect of the Plan Administrator's determination, pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue which it was agreed would be dealt with through a motion. The parties agreed that the issue on the motion was whether, given the November 19, 2001 decision of the Superior Court of Justice in *Board of Trustees of the Electrical Industry of Ottawa Pension Plan v. Cybulski*, Court File No. 01-CV-18268, the Tribunal has jurisdiction to proceed in the circumstances of this case.

At the motion hearing on November 29, 2002, the Superintendent argued that the Tribunal did not have jurisdiction to hear the Applicant's request because the issue that is the subject of the Applicant's request for hearing was decided by the Ontario Superior Court of Justice. The Superintendent therefore argued that the doctrine of issue estoppel applies and precludes the Tribunal from holding a hearing. In its majority reasons dated October 27, 2003, the Tribunal determined that the doctrine of issue estoppel does not apply and that even if it did, this was a proper case for the exercise of the Tribunal's discretion to refuse to apply that doctrine. The Reasons for Decision dated October 27, 2003, were published in Volume 13, Issue 1 of the Pension Bulletin.

At a resumption of the pre-hearing conference on November 12, 2003, hearing dates for February 2-3, 2004 were agreed to.

On December 17, 2003, an application for party status was filed by the Board of Trustees, Electrical Industry of Ottawa Pension Plan. At a resumption of the pre-hearing conference on January 12, 2004, full party status was granted, and the hearing dates were changed. At the hearing on March 30, 2004, the panel reserved its decision.

Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan and to;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund (the "First Proposal"); and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust (the "Second Proposal").

On June 10, 2002, an application for party status was filed by Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R. A. Varney and Bill Fitz, being the members of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees Pension Committee, representing the members and retired members of the Plan. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, an order for disclosure was issued against Kerry (Canada) Inc.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

At a resumption of the pre-hearing conference on May 5, 2003, the parties agreed to attend a settlement conference to deal with the issue of expenses. The settlement conference scheduled for July 7, 2003, was rescheduled to August 19, 2003.

Evidence was heard on October 27-29, 2003 and on January 7-8, 2004 and oral argument took place on January 26, 2004. In its Reasons For Decision dated March 4, 2004, the Tribunal ordered the Superintendent to carry out the First Proposal contained in the Notice of Proposal with the modification that the amounts to be reimbursed (with foregone income thereon) should be specified as per the direction of the Tribunal. The Tribunal also ordered the Superintendent to refrain from carrying out the Second Proposal contained in the Notice of Proposal. The Reasons For Decision dated March 4, 2004, are published in this bulletin on page 132.

On March 30, 2004, the DCA Employees Committee filed a notice of appeal in the Ontario Superior Court of Justice (Divisional Court).

Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, an application for party status was filed by Kerry (Canada) Inc.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

On June 5, 2003, the pre-hearing conference resumed to deal with the framing of the "partial wind-up issue." The DCA Employees Pension Committee indicated that it would be bringing a motion for an order that would add an issue to or otherwise amend the matters in issue. That motion and another motion by Kerry

(Canada) Inc. to amend the "partial wind up issue" were heard on June 25, 2003. At the hearing, the parties agreed on a revised wording of the "partial wind up issue," and it was ordered that the statement of the issues in the proceeding be amended accordingly.

At a resumption of the pre-hearing conference on October 14, 2003, the parties agreed to hearing dates. On March 2-3, 2004, the Tribunal heard the evidence of the witnesses who were put forward in this matter. On April 8, 2004, oral arguments will take place.

Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002;

On October 31, 2002, Slater Steel Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel Inc.

On November 7, 2002, an application for party status was filed by John Hughes.

At the pre-hearing conference on February 11, 2003, full party status was granted to John Hughes. At the pre-hearing conference, Slater Steel Inc. and the Superintendent indicated that they would be bringing motions with respect to disclosure. On May 13, 2003, the parties agreed to adjourn the May 14, 2003 motion date, to permit the parties time to resolve the disclosure issues altogether or at least narrow the issues to be determined by the Tribunal. The motion was rescheduled to August 7, 2003 but it did not proceed.

On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice in relation to Slater Steel Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings. The hearing in this matter originally scheduled for October 8-10, 15-16, 2003, therefore did not proceed.

Barbara Lewis, Retirement Plan for Unionized Employees of Donohue Forest Products Inc., Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496, FST File Number P0207-2002;

On November 18, 2002, Barbara Lewis requested a hearing regarding the Superintendent's Notice of Proposal dated November 8, 2002, to refuse to make an order under section 87(2)(a) and (c) of the Act, requiring Donohue Forest Products Inc. to comply with sections 37(3)(b) and 48(1) of the Act and the terms of the Plan in the calculation of the pre-retirement death benefits payable from the Plan to Barbara Lewis, spouse of the late Harold Lewis.

On February 6, 2003, an application for party status was filed by Abitibi-Consolidated Company of Canada (formerly Donohue Forest Products Inc.). At the pre-hearing conference on February 21, 2003, full party status was granted to Abitibi-Consolidated Company of Canada.

On May 12, 2003, a motion for disclosure brought by the Applicant was heard. The motion was dismissed.

The hearing was held on July 2, 2003, September 22, and 25, 2003. In its reasons dated January 9, 2004, the Tribunal directed the Superintendent, by order, to carry out the Notice of Proposal. The Reasons for Decision dated January 9, 2004, are published in this bulletin on page 118.

On February 6, 2004, the Applicant filed a notice of appeal in the Ontario Superior Court of Justice (Divisional Court).

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456, FST File Number P0220-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464, FST File Number P0221-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Bestfoods Canada Inc., Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358, FST File Number P0222-2003;

On March 24, 2003, Mr. Gerry O'Connor requested a hearing regarding the Superintendent's Notice of Proposal dated February 25, 2003, to refuse to make an order, pursuant to section 69 (1) (d) or (e) of the *Pension Benefits Act*, to wind up, in part, the Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358.

On April 11, 2003, an application for party status was filed by Unilever Canada Inc., the successor to Bestfoods Canada Inc. At the pre-hearing conference on June 25, 2003, full party status was granted to Unilever Canada Inc. The pre-hearing conference was adjourned to allow the parties the opportunity to resolve some preliminary issues and to allow the Applicant to bring a motion, as necessary, with respect to disclosure of documents and notice of hearing. The motion hearing scheduled for September 22, 2003, was rescheduled to November 3, 2003, at the request of the parties. At the end of the hearing on the motion, the Tribunal made Orders framing the issues in the proceeding, establishing the requirements for giving notice of the main hearing and requiring disclosure by Unilever Canada Inc. and the Superintendent of certain material relevant to the issues in the proceeding.

On January 22, 2004, the Tribunal heard argument from the parties on a request by Unilever Canada Inc. for an order separating certain jurisdictional and standing issues for preliminary determination by the Tribunal. That request was denied, the Tribunal confirming its earlier decision to receive any evidence and hear argument on those issues, along with evidence and argument on the other issues, at the main hearing in this proceeding.

On March 2, 2004, the Tribunal granted the parties' request to defer the disclosure date, and adjourn the March 8, 2004 pre-hearing conference return date, as the parties are engaged in settlement discussions.

Boilermakers' National Pension Plan (Canada), Registration Number 0366708, FST File Number P0228-2003;

On October 7, 2003, Trustees of the Boilermakers' National Pension Plan (Canada) (the "Plan") requested a hearing regarding the Superintendent's Notice of Proposal dated September 22, 2003. By the terms of the Notice of Proposal, the Superintendent proposes to:

- revoke or refuse to register certain amendments to the Plan which provide that a member is deemed not to be retired unless he or she has withdrawn from employment in the construction industry, or to reduce an early retirement benefit for a member who is re-employed by an employer not participating in the Plan, on the grounds that these amendments impose additional requirements for, or restrictions on the continued receipt of, early retirement benefits in breach of s. 40(2) of the *Pension Benefits Act* (the "Act");
- direct the trustees of the Plan to cease requiring members who are retiring early to confirm that they will cease working in the boilermaker industry, on the grounds that no such requirement is set out in the Plan; and
- refuse registration of a Plan amendment that would allow a plan member to terminate membership in the Plan if contributions were not made on his or her behalf by a participating employer but only if the member withdraws from employment in the construction industry, on the grounds that this qualification would add a further condition to the right to terminate membership in contravention of s. 38(1) of the Act.

The pre-hearing conference was held on December 8, 2003. Hearing dates for the giving of evidence are scheduled on April 19, 20 and 21, 2004, and oral arguments will take place on June 14, 2004.

On February 4, 2004, the parties agreed to adjourn the matter *sine die* pending finalization of the terms of a settlement.

Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0230-2003;

On November 6, 2003, the Board of Trustees of Plumbers Local 463 Pension Plan Trust Fund requested a hearing with respect to an Order dated October 6, 2003 of the Deputy Superintendent, Pensions, under subsection 106(13) of the *Pension Benefits Act*. In his Order, the Deputy Superintendent ordered that the Board of Trustees pay the cost of an examination, investigation or inquiry in respect of the Plan and pension fund for the Plan; and the cost of the reports prepared following the examination, investigation or inquiry referred to in paragraph (a) of the order.

At the pre-hearing conference on January 19, 2004, the parties agreed that the issue of the jurisdiction of the Tribunal to proceed with the hearing needed to be determined in a motion in advance of the hearing on the merits. The Superintendent's position is that there is no jurisdiction for the Tribunal to conduct a

hearing under section 89 of the Act where the Deputy Superintendent has issued an Order under subsection 106(13) of the Act. Further, the Superintendent states there is no express authority conferred upon the Tribunal by section 89 of the *Act*, nor is there any implied authority to conduct such a hearing. The motion is scheduled for April 15, 2004.

On February 26, 2004, the matter was adjourned *sine die* pending the outcome of an application by the Applicant, for judicial review of the Superintendent's Order dated October 6, 2003.

Melnor Canada Ltd. Retirement Income Plan, Registration Number 449777, FST File Number P0233-2004;

On January 21, 2004, Gardena Canada Ltd. (the "Employer"), requested a hearing regarding the Notice of Proposal dated December 19, 2003 of the Deputy Superintendent, Pensions, to refuse to consent to the application dated March 12, 2002, submitted by the Employer for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act.

On February 25, 2004, an application for party status was filed by David Evans, a member of the Plan.

On March 4, 2004, applications for party status were filed by Raymond Bamsey, Ernest Burke, Pat Dobson, Leone Douglas, Gloria Dunn, Karen Garvey, Doreen Harding, Connie Heron, James Peter and Patricia Sinden, who are active, deferred vested and retired members of the Plan.

On March 19, 2004, an application for party status was filed by Kevin MacRae, a member of the Plan. On March 24, 2004, an application for party status was filed by Liviana Macoretta, a member of the Plan.

A pre-hearing conference is scheduled for May 6, 2004.

Hugo Jaik, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0235-2004;

On February 16, 2004, Hugo Jaik, a former member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated January 28, 2004, to refuse to make an order requiring the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Board") to recalculate the pension benefits of members, and specifically to recalculate Mr. Jaik's pension benefit; and requiring that the composition of the Board be amended to comply with the terms of the Plan and declaring that the decisions of the Board improperly constituted are invalid.

A pre-hearing conference is scheduled for May 25, 2004.

Coats Canada Inc., Coats Canada Employees' Pension Plan, Registration Number 288563, FST File Number P0237-2004-03-04;

On March 2, 2004, Coats Canada Inc. (the "Employer"), requested a hearing regarding the Deputy Superintendent, Pensions, Notice of Proposal dated February 5, 2004, to make an Order under section 69(1) of the Act, that the Plan be wound up in part in relation to those members and former members of the Plan who were employed by the Employer and who ceased to be employed between July 1999, and December 31, 1999, as a result of:

(i) the discontinuance of all or a part of the business of the Employer; or

(ii) the discontinuance of all or a significant portion of the business carried on by the Employer at its Coats Paton Division

On March 4, 2004, the Applicant requested agreement from the Superintendent to adjourn this matter *sine die* pending the outcome of the *Monsanto* case. On March 12, 2004, the Superintendent agreed to the adjournment.

Ronald Ford, Bridgestone/Firestone Canada Inc., Pension Plan — 1992, Registration Number 251348; FST File Number P0238-2004;

On March 11, 2004, Ronald Ford, a member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated February 18, 2004, to refuse to make an Order pursuant to section 87 of the Act requiring the payment of a disability benefit to the Applicant from the "Firestone Plan."

On March 25, 2004, an application for party status was filed by Bridgestone/Firestone Canada Inc.

On April 6, 2004, an application for party status was filed by the CAW-Canada and its Local 1411.

A pre-hearing conference is being scheduled.

The following cases are adjourned *sine die*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554, and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;**
  At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.
- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;**
  Matter continues to be adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS," Registration Number 345983), FST File Number P0071-1999;**
  Matter adjourned *sine die* at a pre-hearing conference on February 21, 2000.
- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;**
  At the pre-hearing conference on June 27, 2000, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;**
  Matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;**
  At the request of the parties, this matter was adjourned *sine die* pending the outcome of the *Monsanto* case.

- **Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002, FST File Number P0130-2000;**
  On May 30, 2003, the parties asked that the matter continue to be adjourned *sine die* pending resolution of the issues in the proceeding.
- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;**
  The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.
- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;**
  On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.
- **Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;**
  The pre-hearing conference scheduled for October 28, 2002, was adjourned *sine die* on consent of the parties.
- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**
  At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002;**
  On May 29, 2003, the parties consented to adjourn the June 11, 2003 hearing date *sine die*, pending finalization of a settlement.
- **Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325, FST File Number P0224-2003;**
  On September 8, 2003, the parties advised they agreed to proceed with settlement discussions, and requested that the pre-hearing conference scheduled for September 10, 2003, be adjourned to a date to be determined if one becomes necessary.

Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments
U0231-2003	To Refuse to Consent dated November 24, 2003	Withdrawn January 14, 2004
U0234-2004	To Refuse to Consent dated November 26, 2003	Reasons for Decision dated March 1, 2004

Decisions to be Published

Barbara Lewis (Donohue Forest Products Inc.)
Kerry (Canada) Inc.
U0234-2004

Financial Services Tribunal Decisions with Reasons

INDEX NO.:	FST File Number P0207-2002
PLAN:	Retirement Plan for Unionized Employees of Donohue Forest Products Inc. — Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496
DATE OF DECISION:	January 9, 2004
PUBLISHED:	Bulletin 13/2 and FSCO Web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pensions Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a request for an order under section 87 of the Act submitted on behalf of Barbara Lewis, spouse and beneficiary of Harold Lewis, deceased, in connection with the calculation of pre-retirement death benefit in the Retirement Plan for Unionized Employees of Donohue Forest Products Inc. — Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

BARBARA LEWIS

Applicant

– and –

SUPERINTENDENT OF FINANCIAL SERVICES

– and –

ABITIBI-CONSOLIDATED COMPANY OF CANADA (formerly Donohue Forest Products Inc.)

Respondents

BEFORE:

Martha Milczynski,*
Chair of the Tribunal and of the Panel

David A. Short,
Member of the Tribunal and of the Panel

Shiraz Y. M. Bharmal,
Member of the Tribunal and of the Panel

[*Note: Following the conclusion of the hearing by the panel but prior to the rendering of its decision, Martha Milczynski was appointed a Prothonotary in the Federal Court of Canada. As a result of this appointment, Ms. Milczynski was precluded from participating in the panel's decision.]

APPEARANCES:

For Barbara Lewis:

Gordon H. Lewis

For the Superintendent:

Deborah McPhail

For Abitibi-Consolidated Company of Canada:

Bruce Pollock

Gary Nachshen

HEARING DATES:

July 2, 2003

September 22, 2003

September 25, 2003

REASONS FOR DECISION

Background

1. Abitibi-Consolidated Company of Canada and its predecessor corporations ("Employer") are the sponsor and the administrator of the Plan registered under the Act; Aon Consulting Inc. ("Aon") are external consultants engaged by the Employer to provide administrative and Actuarial services for the Plan.

2. The Plan succeeded pension plans previously established by a predecessor corporation dating back to July 1, 1944.

   In January 1982, the Plan was restated with effect from January 1, 1981 ("January 1982 Restatement").

   In March 1988, the Plan text was consolidated effective September 1, 1987 and was restated to include various amendments between January 1982 and the date of consolidation, and to incorporate changes agreed in the collective agreement effective May 1, 1987 ("March 1988 Restatement").

   On March 24, 1993, the Plan was revised and restated to January 1, 1992, incorporating revisions effective January 1, 1988 to reflect changes to the Act and other matters ("March 1993 Restatement"). The March 1993 Restatement made substantial changes to the calculation of benefits for retirement after 1990, and included minimum provisions to ensure that benefits already earned before then were not reduced. The March 1993 Restatement also reflected the revised requirements of the Act as of January 1, 1988, which affected minimum requirements for registered plans for periods on and after January 1, 1987 (the "reform" date). Among other things, the March 1993 Restatement provided for a minimum benefit upon the death of a vested member, prior to retirement, for the benefit related to post-reform service and to post-reform amendments respecting pre-reform service ("pre-retirement death benefit").

   In June 1997, the Plan was again revised and restated as of March 1, 1996 to reflect the change in the sponsoring employer and to effect changes requested by the federal tax regulatory agency, Revenue Canada, as it then was.

   Further changes were made to the early and postponed retirement provisions of the Plan in December 1997.

3. Mr. Harold Lewis ("Mr. Lewis"), the deceased husband of the Applicant, was a member of the Plan until his death on November 23, 1997. Mr. Lewis joined the Plan on April 1, 1965. He was on disability leave of absence at the time of his death. The total service credited to Mr. Lewis for the purposes of determining his pension under the Plan was 30.09 years. The credited service included a period of 46 weeks of disability absence preceding his eligibility for the employer's long term disability plan ("LTD"). Mr. Lewis commenced LTD benefits on January 26, 1990. Of the total credited service, 10.89 years related to the period after 1986.

4. On December 10, 1997, the Applicant was advised by the Employer (the sponsor at that time was Donohue, a predecessor company) that, according to the provisions of the Plan, she was entitled to a death benefit upon Mr. Lewis' death. The death benefit, at her option, could be taken as either a lump sum or an equivalent monthly pension. The lump sum benefit was equal to a refund of contributions made by Mr. Lewis, with interest, for the period prior to 1987 plus the

value of the benefits earned on and after the reform date. The total amount of the lump sum was $129,542.30. The determination of this death benefit excluded any credit for the 46 weeks of Mr. Lewis' disability absence preceding LTD.

5. On December 17, 1997, the Applicant opted for the cash lump sum, which was to be transferred to her RRSP with the Royal Bank. An amount of $130,303.58 ($129,542.30, plus interest from the date of death to the date of disbursement) was transferred to her RRSP at the end of December 1997 or soon thereafter.
6. In response to enquiries from Mr. Gordon Lewis on behalf of the Applicant, the Employer asked Aon to prepare a detailed explanation for Mr. Gordon Lewis about the calculation of the death benefit. Aon prepared an explanation on May 22, 1998, which is briefly summarized below:
   a. The pre-retirement death benefit according to Plan provisions comprised of a return of pre-reform member contributions with interest ($44, 237.52) plus the commuted value of the benefit attributable to post-reform service ($85,900.57), for a total of $130,138.09 — higher than the previous amount of $129,542.30. This change was attributed to an erroneous exclusion of a "bridge" benefit in the previous calculation.
   b. The commuted value that would satisfy the minimum pre-retirement death benefit provisions of the Act was determined to be $121,790.05. The following methodology was used to compute the minimum: determine the benefit for all service using the plan provisions applicable at the date of death, deduct from it the benefit for pre-reform service using the plan provisions as they existed on December 31, 1986, and add the pre-1987 member contributions with interest to the result. Since the amount so determined, was less than the computation according to plan provisions, no (upward) adjustment was necessary.
7. Following concerns raised by the (then) Pension Commission of Ontario, the Employer agreed to include the 46 weeks of the pre-LTD disability absence in the determination of Mr. Lewis' benefits. As a result, the death benefit was again revised upwards, this time to $137,730.56, by a letter from Aon dated June 2, 1998.
8. On February 12, 1999, Aon further revised the death benefit upwards by another $2,169.06 to rectify an "incorrect" calculation. Ms. Andreé Bonneville, an actuary with Aon testified that this addition reflects a difference that arose from "post-reform improvement to [the benefit for] pre-reform service." This adjustment was confirmed through a "Statement at Death of Member" dated February 19, 2003, showing a total revised death benefit entitlement of $139,899.62. With the various revisions in the amount of pre-retirement death benefit calculated by the Employer, there remains a difference of $10,357.32 between the disbursement of $129,542.30 (as of the date of Mr. Lewis' death) to the Applicant and the latest computation of $139,899.62. Ms. Bonneville has testified that any residual payment will be increased with interest at the annual rate of 6.5% compounded annually from the date of Mr. Lewis' death to the date of disbursement.

9. The Applicant's concerns were not assuaged and she requested the Superintendent to make an Order under section 87(2)(a) requiring the Employer to comply with section 37(3)(b) and 48(1) of the Act. On November 8, 2002, the Superintendent issued a Notice of Proposal To Refuse To Make an Order. On November 22, 2002, the Applicant requested a hearing before the Financial Services Tribunal on this matter.

Relevant Provisions of the Act

Pre-retirement death benefit

48. (1) If a member or former member of a pension plan who is entitled under the pension plan to a deferred pension described in section 37 (entitlement to deferred pension) dies before commencement of payment of the deferred pension, the person who is the spouse or same-sex partner of the member or former member on the date of death is entitled,

(a) to receive a lump sum payment equal to the commuted value of the deferred pension; or

(b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the deferred pension.

Calculation of pre-retirement death benefit

48. (5) For the purposes of this section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed shall be calculated as if the member's employment were terminated immediately before the member's death.

Deferred pension (post-reform)

37. (1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Qualifications

(2) The qualifications are,

(a) that the member must be a member on or after the 1st day of January, 1988;

(b) that the member must be a member for a continuous period of at least twenty-four months; and

(c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

Amount

(3) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in Ontario or in a designated province,

(a) under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date;

(b) under any amendment made to the pension plan after the 31st day of December, 1986; and

(c) under any new pension plan established after the 31st day of December, 1986 for members of the pension plan.

Application of subss. (1-3)

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Pre-reform deferred pension

36. (1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Qualifications

(2) The qualifications are,

(a) that the member must have been employed by the employer, or have been a member of the pension plan, for a continuous period of at least ten years;

(b) that the member must have reached the age of forty-five years; and

(c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

Amount

(3) The benefit is a deferred pension equal to the pension benefit provided under the pension plan as it existed on the 31st day of December, 1986 in respect of employment before the 1st day of January, 1987 in Ontario or in a designated province,

(a) under the terms of the pension plan, with respect to employment on or after the qualification date;

(b) by an amendment to the pension plan made on or after the qualification date; and

(c) by the creation of a new pension plan on or after the qualification date.

Application of subss. (1-3)

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Relevant Provisions of the Plan

EXTRACTS FROM CURRENT PLAN

Provision for Death Benefit

Section 6.1 Death Before Pension Commencement

Where a Member dies before the commencement of his pension, a death benefit becomes payable, equal to (a) plus (b) as follows:

a) Pre 1987 Service

(1) the Member's required contributions made to the Plan from January 1, 1981 to December 31, 1986 with Credited Interest thereon is payable in a lump sum to the Members Beneficiary; plus

(2) the benefits, if any, payable in accordance with the terms of the Former Plan and/or the Prior Plans

b) Post 1986 Service

(1) if the member has been a Member of the Plan less than 24 months at his date of death, the Member's required contribution made to the Plan after 1986 with Credited Interest thereon is payable in a lump sum to the Member's Beneficiary or,

(2) if the Member has completed at least 24 months of Plan membership at his date of death, the Commuted Value of the benefits accrued to the Member, excluding any entitlement to bridge benefits pursuant to Section 5.3, for Credited Service after 1986 is payable to the Member's Spouse, unless the Member and his Spouse have completed and filed a waiver in prescribed form. The Spouse may elect to receive such benefits either as a lump sum, payable in cash or as a transfer to a Registered Retirement

Savings Plan, or as an annuity payable for the Spouses lifetime, commencing any time prior to the end of the calendar year in which the Spouse attains age 71 or, if later, within one year after the death of the Member, or prior to 1992, age 65. If the Spouse fails to make an election within 90 days of being advised of the entitlement under [this] Section, the Spouse will be deemed to have elected an immediate annuity.

If the Member had no Spouse at the date of death or the Member and his Spouse had completed and filed a waiver in prescribed form, the benefit payable under this Section 6.1 (b) is payable in a lump sum to the Members Beneficiary.

If a Member had received, at termination, part of his benefits in cash with the balance to be provided as a deferred benefit, the Member's Spouse or Beneficiary, as applicable, will receive a settlement in respect of death benefits under Section 6.1 based on the commuted value of the yet undistributed portion of the termination benefits.

Section 6.2 Excess Contributions

Death benefits payable under this Article 6 upon the Members death prior to retirement will include, if applicable, a refund of any Excess Contributions determined in accordance with Section 5.6 (b)

Retirement benefit provisions relevant to computing the death benefit

Section 5.1 Normal Retirement Benefits

b) For Retirement After May 1, 1993

Subject to the provisions of Section 5.5 (Maximum Pension) and Section 5.1(c) (Minimum Benefit), a Member who retires after May 1, 1993 and on or after his normal retirement date will receive an annual pension in an amount equal to (1) minus (2), as follows:

(1) 1.65% of the average of the Member's Earnings in each of his 5 consecutive years of highest Earnings during his last 15 years of Continuous Service before retirement multiplied by the number of his years of Credited Service.

LESS

(2) 1/35th of the maximum annual pension payable to a person retiring at age 65 under the Canada/Québec Pension Plan (or other similar statutory plan), the amount of such maximum annual pension to be determined at his retirement date (or his date of Total Disability if the Member retires immediately after being in receipt of income continuance benefits under an insured program contributed to by the Participating Company), multiplied by his years of Credited Service for Canada/Québec Pension Plan Offset to a maximum of 14 years.

c) Minimum Benefit for Retirement after 1990

Subject to the provisions of Section 5.5 (Maximum Pension), the pension under Section 5.1(b) shall not be less than (1) plus (2) plus (3) minus (4) as follows:

(1) The benefit to which a Member is entitled under the Former Plan and/or the Prior Plans in respect to Credited Service prior to January 1, 1966,

PLUS

(1) 2% of the average of the Member's Earnings in each of his 5 consecutive

years of highest Earnings during his last 15 years of Continuous Service immediately preceding January 1, 1991 multiplied by the number of his years of Credited Service on and after January 1, 1966 but before January 1, 1991.

PLUS

(3) 1.65% of the average of the Member's Earnings in each of his 5 consecutive years of highest Earnings during his last 15 years of Continuous Service before retirement multiplied by the number of his years of Credited Service on and after January 1, 1991.

MINUS

(4) The lesser of

(A) 7/10ths of 1% of the average of such Member's Earnings in each year of his 5 consecutive years of highest Earnings during his last 15 years of Continuous Service with a Participating Company; or

(B) 7/10ths of 1% of the average of the YMPE during the last 5 years of his Continuous Service with a Participating Company, or, for a Member in receipt of benefits under the Participating Company's long term disability plan, 7/10ths of 1% of the average of the YMPE during the 5 years immediately preceding, his date of Total Disability,

multiplied, in either case, by the number of years of his Credited Service for Canada/Québec Pension Plan Offset.

EXTRACT OF COMPARABLE RETIREMENT PROVISIONS IN JANUARY 1982 RESTATEMENT

Section 6.01 Normal Retirement Benefits

A Member who retires at normal retirement date on or after January 1, 1981 will receive an annual retirement income equal to the total of the following:

a) Regular Retirement Income

An annual retirement income equal to 40% of the total of the required contributions deposited or deemed, by reason of periods of absence in excess of 52 weeks' duration, to have been deposited to his credit in the Trust Fund for service on or after January 1, 1981.

b) Minimum Retirement Income Supplement

In addition, the Member will receive such amount of supplementary benefit, if any, as may be required, when added to the retirement income benefits provided under paragraph (a) above and the regular retirement income under section 7.1 of the Former Plan with respect to service on and after January 1, 1966, to provide a total annual retirement income equal to two per cent (2%) of the average of the Member's Earnings in each of his five (5) consecutive years of highest Earnings during his last fifteen (15) years of employment prior to retirement multiplied by the number of his years of Credited Service, reduced by the lesser of —

(A) 7/10ths of 1% of the average of such Member's Earnings in each year of his five (5) consecutive years of highest Earnings during his last fifteen (15) years of employment with a Participating Company;

or

(B) 7/10ths of 1% of the average of the annual year's maximum pensionable earnings as defined by section 17 of the Canada Pension Plan during the last five years of his employment with a Participating company

multiplied, in either case, by the number of years of his Credited Service for Canada Pension Offset.

Such supplementary benefit shall be inclusive of the minimum retirement income supplement provided under the Former Plan for service between January 1, 1966 and December 31, 1980.

c) Former Plan and Prior Plan Benefits

In addition, each Member who was a member of the Former Plan and/or Prior Plans will receive the benefits to which he is entitled thereunder except for the minimum retirement income supplement based on Credited Service between January 1, 1966 and December 31, 1980 included in paragraph (b) above.

Positions of the Parties

The parties are in agreement as to the various dates and other information that were used for the calculation of the pre-retirement death benefit by the Employer. They also agree that the final amount of the death benefit — $139,899.62 after taking account of the several corrections — appropriately reflects Plan provisions. Ms. Bonneville fully described the computation of this final amount in her testimony and confirmed that it is now correct and, in her opinion, reflects a "generous" interpretation of Plan provisions in some respects.

The Applicant takes the position, however, that the administrator's calculation of the minimum statutory pre-retirement benefit does not comply with subsection 48(1) of the Act.

Subsection 48(1) provides for an entitlement of a death benefit for the spouse of a member who dies prior to retirement and was entitled to a deferred pension described in section 37 of the Act. Subsection 48(5) provides that the deferred pension is to be calculated as if the member had terminated employment on the date of death. Section 37 of the Act provides for an entitlement to a deferred pension for a member who has completed 24 months of continuous service equal to the benefit provided under the pension plan for service after the reform date and under any amendment made to the pension plan after the reform date.

The Applicant argues that all benefits respecting both post-reform and pre-reform employment provided under post-reform amendments vest in accordance with section 37 of the Act, if all the sections of the pension plan in force at the termination date were created after the reform date. The member is not entitled to any benefits under sections of the Plan as it existed on the reform date because they have been repealed prior to the date of termination, and therefore there are no benefits to be considered under section 36 of the Act. The minimum pre-retirement death benefit under subsection 48(1) of the Act must therefore be based on the value of the deferred pension using the then current provisions of the Plan applied to all credited service.

The Superintendent and the Employer submit that the purpose of the split of deferred pensions between sections 36 and 37 of the Act is to segregate benefits earned prior to the major reforms to the Act effective on the reform date and benefits earned on or after the reform date. They argue that the purpose of clause 37(3)(b) of the Act is to capture additional benefits that do not fall within section 36 of the Act since they did not exist in the pension plan as at the reform date. The purpose is not to duplicate

benefits already provided by the deferred pension described in section 36 of the Act. They both maintain that any increase in pre-reform benefits that was provided by a post-reform amendment to the Plan was taken into account in the final calculation.

The Superintendent and the Employer also argue that the effect of clause 37(3)(b) of the Act is not that any post-1986 amendment to a pension plan which changes the benefit formula for pre-1987 benefits incorporates all of the pre-1987 benefits into the deferred pension under section 37 of the Act. The benefit provided by the amendment is simply the change provided by the amendment, not the change as well as the original benefit.

The Employer also argues that the Applicant's interpretation of the Act would have the effect of retroactively increasing the costs of the Employer, contrary to the legislative intention. The Applicant's position is that his interpretation of section 37 of the Act is not retroactive, because it applies to actions taken by employers subsequent to the reform date with respect to service prior to that date.

The Applicant also questions the statutory basis for the methodology used by Aon for capturing the effect of post-reform amendments on pre-reform benefits.

Analysis

There is no issue as to whether the Employer's final calculation of the pre-retirement death benefits at least meets the provisions of the Plan. In her testimony, Ms. Bonneville stated that the Employer had been generous in its interpretation of the provisions of the Plan. We have difficulty in accepting all her assertions of this "generosity," especially as it relates to how the benefits for post-reform service were calculated. Nonetheless, we concur with the parties that the final calculation complies with or exceeds the Plan provisions.

The issue concerns whether the final calculation meets the statutory requirements for pre-retirement death benefits. The statutory pre-retirement death benefit is the commuted value of the benefit described in section 37 of the Act. There appears to be no dispute that the Employer's final calculation properly reflects the requirements of clause 37(3)(a) of the Act. The issue lies with whether the requirements of clause 37(3)(b) of the Act have been properly reflected. The crux of the issue revolves around what benefits are swept in to the phrase "under any amendment made to the pension plan after December 31, 1986." Does the word "amendment" connote the incremental change in the benefit, or does it incorporate the whole of the amended benefit?

We are persuaded by the Respondents' argument that the word "amendment" should be given its grammatical and ordinary sense in the context of the scheme and the object of the Act.

In terms of the grammatical and ordinary meaning, we accept the following meaning ascribed to the word "amendment" by Webster's Ninth New Collegiate Dictionary: "an *alteration* proposed or effected by this process." That is, an amendment reflects the change in the provision, and not the provision as a whole.

The Applicant argues that the effect of the March 1993 Restatement was to repeal the provisions that were effective on the reform date, and therefore all the benefits at the date of termination were to be calculated under the new provisions. We do not agree since the Plan continues. The March 1993 Restatement reflects only a change in the provisions as they affected pre-reform service; not their repeal. This is further reinforced by the fact that the prior provi-

sions are repeated in clause 5.1(c) of the Plan as a minimum; presumably to ensure that there was no reduction in benefits previously earned. Thus, the prior provisions continue to exist in a changed form.

In terms of the context of the Act, we note that the interaction of sections 36 and 37 of the Act is to delineate the portion of the deferred pension that relates to the amount that was attributable to pre-reform service based on pre-reform plan provisions, and which remains subject to the prior vesting rules, from the balance.

We conclude that the effect of clause 37(3) (b) is to provide for any change or increase resulting from a post-reform amendment. Having thus concluded, we do not need to deal with the issue of retroactivity.

Does the methodology used by Aon have a basis in the statute? We believe in essence it does, in that it is designed to capture any increase that is not apparent because of the construction of the amended formula. To quote the testimony of Ms. Bonneville:

> "Given the redesign of the Plan back in 1991, we cannot compute, again, pension amounts for certain periods of service. We have to compute it on the aggregate and compare it. The only way we can obtain the post '86 pension entitlements, or pension, or whatever, is to compute the aggregate and then subtract what was accrued as of December 31, '86, with provisions applicable at that date. That's the only way we can do it on that particular plan."

Like the Applicant, however, we are puzzled that the Employer chose to provide an enhancement to the death benefit by reflecting one component of the change (see paragraph 8 of the Background), which presumably was already accounted for in accordance with the above approach. Since this is to the benefit of the Applicant, and the final calculation (at least in so far as it reflects the Plan provisions) is acceptable to the parties, we do not need to pursue this matter.

We are also not convinced that Aon's calculation of the statutory death benefit is correct in all respects. Sections 48(1) and 37(3)(a) of the Act require the post-reform death benefit to include the commuted value of the pension benefit provided "under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date." Ms. Bonneville testified (and the written summary of her calculations subsequently added to the submissions of the Employer confirms) that Mr. Lewis' pension amount under the terms of the pension plan based on post-reform service amounted to $9,416.89. The commuted value of that pension, based on the factor of 9.85936 reported by Ms. Bonneville, was $92,844.51 as of the date of death. This exceeds the minimum post-retirement death benefit of $87,313.90 reported by Ms. Bonneville. It appears that the reason for this discrepancy is that Ms. Bonneville's calculations effectively recognize a negative pension benefit amount under section 37(3)(b) of the Act representing the effect of post-1986 pension plan amendments on Mr. Lewis' pension entitlement in respect of pre-reform service, and we question whether the intent of the legislation is that the effect of including the pension benefit amount under section 37(3)(b) can be to reduce the deferred pension and its commuted value. Nevertheless, we are satisfied that even if the higher commuted value had been used in the calculations, the death benefit of $139,899.62 pursuant to the terms of the Plan would still have exceeded the resulting minimum death benefit.

Disposition

The Superintendent is hereby directed, by order, to carry out the proposal contained in the Notice of Proposal to Refuse to Make an Order requiring the Employer to comply with section 37 (3)(b) and 48 (1) of the Act.

We note that there remains payable a portion of the death benefit in the amount of $10,357.32 as of November 23, 1997, the date of Mr. Lewis' death, plus interest at the annual rate of 6.5 per cent compounded annually from that date to the date of disbursement.

We remain seized in this matter in respect of any applications made for costs within 60 days of the date of this decision.

DATED at Toronto this 9th day of January, 2004.

David A. Short,
Member of the Tribunal and of the Panel

Shiraz Y. M. Bharmal,
Member of the Tribunal and of the Panel

INDEX NO.: FST File Number U0234-2004

DATE OF DECISION: March 1, 2004

PUBLISHED: Bulletin 13/2 and FSCO Web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated November 26, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated November 26, 2003 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   > **67.–(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. An application for withdrawal of funds from a locked-in account, based on financial hardship, is also subject to the conditions and requirements prescribed in sections 83 through 89 of Regulation 909, as amended (the "Regulation"). The Superintendent's ground for denial was that the requirements of subsection 88(2) of the Regulation do not allow the Applicant to withdraw any amount of funds from her locked-in account in this situation.

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.

4. Subsections 88(2) and 89(6) of the Regulation are relevant to this application, and read as follows:

   > **88.-(2)** Subject to section 89, unless the application relates to expenses incurred or to be incurred for the benefit of a dependant, the owner is entitled to withdraw an amount calculated using the formula,
   >
   > A – (B – C) = D
   >
   > in which,
   >
   > "A" is the amount the owner applies to withdraw;
   >
   > "B" is the market value of all assets of the owner and the spouse or same-sex partner except the following:

1. The owner's principal residence and all personal property related to its use.
2. Motor vehicles.
3. Personal effects, including clothing and jewellery.
4. Tools of the trade that are essential to the employment of the owner or the spouse or same-sex partner.
5. Assets that are necessary to the operation of a business or farm which the owner or the spouse or same-sex partner operates and has an interest in, up to a maximum of $50,000 for each person and for each business or farm. However, if the owner and the spouse or same-sex partner operate and have an interest in the same business or farm, the total amount for that business or farm shall not exceed $50,000;

"C" is the total of the liabilities of the owner and the spouse or same-sex partner, except liabilities secured against excluded assets listed under "B";

"(B – C)" cannot be less than 0;

"D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.

89.-(6) The amount the owner may apply to withdraw under section 88 is the amount by which "E" exceeds "F" where,

"E" is 50 per cent of the Year's Maximum Pensionable Earnings for the year in which the application is signed; and

"F" is 75 per cent of the owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application.

5. Based on the information provided by the Applicant in her application dated October 9, 2003, she has applied to withdraw the maximum amount, in this case calculated to be an amount of $19,729.44, in accordance with subsection 89(6) of the Regulation. This amount is "A" in the formula described in subsection 88(2) of the Regulation. In that formula, "B" and "C" are determined by information provided in the application, using the assets and liabilities of the owner and her spouse, and have the following values in this situation:

   "B" equals $129,000 (the market value of all included assets of the owner and spouse); and

   "C" equals $0 (the corresponding liabilities of the owner and spouse).

6. In this case, the formula in subsection 88(2) of the Regulation allows for no amount to be withdrawn, based on the following calculation:

   D = A – (B – C)
   = $19,729.44 – ($129,000 – $0)
   = $19,729.44 – $129,000
   = – $109,270.56

   As the value of "D" is less than zero, "D" is determined to be zero, and the Applicant is not entitled to withdraw any funds from her locked-in account.

7. In her submissions to the Tribunal, the Applicant has provided statements regarding her finances and health considerations, and has indicated that she and her spouse wish to allocate their existing assets of $129,000 for home improvements and retirement needs. However, in making a determination of this matter, the Tribunal cannot direct the Superintendent to approve an application that does not meet the requirements of

the Act and Regulation. In this case, all net assets shown in the application, including those of the Applicant and her spouse, must be included when calculating "D" in subsection 88(2), with the result that the Applicant is not entitled to withdraw any amount from her locked-in account.

8. The inclusion of a spouse's assets and liabilities in the calculation is a requirement of the Regulation, and cannot be waived by the Superintendent or by the Tribunal. As a result, this application cannot be granted, as it does not meet the relevant requirements of the Regulation, and the Tribunal affirms the Superintendent's decision not to consent to the application.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated November 26, 2003, is affirmed and this application is dismissed.

DATED at Toronto this 1st day of March, 2004.

Mr. C.S. (Kit) Moore,
Member, Financial Services Tribunal

INDEX NO.:	FST File Number P0191-2002
PLAN:	Pension Plan for the Employees of Kerry (Canada) Inc.
DATE OF DECISION:	March 4, 2004
PUBLISHED:	Bulletin 13/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a proposal of the Superintendent of Financial Services to order that Kerry (Canada) Inc. reimburse the pension fund of the Pension Plan for the Employees of Kerry (Canada) Inc. (the "Plan") for certain expenses paid from the Plan since January 1, 1985, together with income thereon, and to order that Kerry (Canada) Inc. amend certain expense provisions of the current Plan documents for consistency with the original Plan documents as specified in the proposed order;

AND IN THE MATTER OF a hearing in accordance with subsection 89(8) of the Act;

AMONG:

KERRY (CANADA) INC.

Applicant

– and –

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

– and –

ELAINE NOLAN, GEORGE PHILLIPS, ELISABETH RUCCIA, KENNETH R. FULLER, PAUL CARTER, R.A. VARNEY and BILL FITZ, being members of the DCA EMPLOYEES PENSION COMMITTEE representing certain of the members and former members of the Pension Plan for the employees of Kerry (Canada) Inc.

Respondents

BEFORE:

Colin H.H. McNairn,
Vice Chair of the Tribunal and Chair of the Panel

Shiraz Y.M. Bharmal,
Member of the Tribunal and of the Panel

David A. Short,
Member of the Tribunal and of the Panel

APPEARANCES:

Ronald J. Walker,
Christine P. Tabbert
For Kerry (Canada) Inc.

Deborah McPhail
For the Superintendent of Financial Services

William Fitz
For the Members of the DCA Employees Pension Committee

HEARD:

October 27 & 28, 2003 and
January 7, 8 & 26, 2004

REASONS FOR DECISION

Facts

The Applicant, Kerry (Canada) Inc. ("Kerry Canada"), is the successor to DCA Canada Inc. (formerly called DCA Food Industries Ltd. and the Canadian Doughnut Company Limited) and the sponsor of a pension plan for its employees initially established by its predecessor. We refer to the employer and plan sponsor, from time to time, as the "Company" and the pension plan for the Company's employees as the "Plan."

The Plan was established on a defined benefit basis by the terms of a plan text effective December 31, 1954 (the "1954 Plan") with funding through Company and employee contributions to a pension fund constituted as a trust under a trust agreement made as of December 31, 1954 between the Company and National Trust Company, Limited as trustee (the "1954 Trust Agreement"). We refer to National Trust and any successor trustee, from time to time, as the "Trustee" and to the pension fund in respect of the Plan as the "Fund."

A new trust agreement was entered into between the Company and the same Trustee in 1958 (the "1958 Trust Agreement"), which was not materially different from the 1954 Trust Agreement in those provisions that have a bearing on the matters at issue in this proceeding. The actions of the Company in charging certain expenses to the Fund that are challenged in this proceeding took place beginning in 1985. We will, therefore, consider those actions in light of the terms of the 1958 Trust Agreement although the same results should pertain if the 1954 Trust Agreement were taken as the benchmark.

From the establishment of the Plan up to and including December 1984, the Company paid all of the expenses relating to the Plan and the Fund. From the beginning of 1985, the Company began charging expenses relating to the Plan and the Fund, specified below under the heading "Expenses at Issue," to the Fund although in 1995 the Company reimbursed the Fund for all of the expenses that represented the fees of the Trustee up to the end of 1994, together with foregone income on the amount of those expenses. The Company relies on amended versions of the Plan text, namely the 1975 Plan, 1987 Plan and the 2000 Plan, as authorizing the payment from the Fund of those expenses that were, in fact, borne by the Fund.

On April 22, 2002, the Superintendent of Financial Services (the "Superintendent"), acting through his delegate, the Deputy Superintendent, Pension Division, issued a Notice of Proposal under section 87 of the *Pension Benefits Act* (the "Act") containing proposals to make orders against Kerry Canada requiring it to:

- reimburse the Fund for all of the amounts paid out of the Fund after January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members of the Plan (excluding taxes, interest and penalties levied against the Fund) and for all income that would have been earned by the Fund if those expenses had not been paid from the Fund (the "First Proposal"); and
- amend the Plan and the trust in respect of the pension fund for the Plan so that all amendments to the Plan and the trust that permit expenses to be deducted from the Fund are consistent with the 1954 Trust Agreement and the 1954 Plan (the "Second Proposal").

The effect of the Second Proposal would be to require Kerry Canada to amend the Plan and the trust so that the expenses chargeable to the Fund are expressly limited to those expenses that are for the exclusive benefit of the members of the Plan.

Kerry Canada made a Request for Hearing by this Tribunal in respect of the Notice of Proposal, as it was entitled to do pursuant to subsection 89(6) of the Act, and Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz, being members of the DCA Employees Pension Committee representing certain members and former members of the Plan (the "Employees Committee") were added as parties by order of the Tribunal.

Those provisions of the various Trust Agreements and Plan texts that bear upon the determination of the issues in this proceeding are summarized in the body of these Reasons for Decision and have been set out in full in the Appendix to these Reasons.

Expenses at Issue

There are seven categories of expenses charged to the Fund after January 1, 1985 that were initially at issue in this proceeding, namely:

(a) The fees of the Trustee for the performance of its services in respect of the Fund, which were borne by the Fund from 1998;

(b) The fees of an investment manager for its services in respect of the investment of the Fund assets, which were charged to the Fund from 2000;

(c) The fees of accounting firms in respect of their audits of the Fund from 1993;

(d) Miscellaneous expenses relating to the Plan or the Fund, including filing fees charged by pension regulatory bodies;

(e) The fees of consulting firms for the actuarial and other services relating to the Plan or the Fund;

(f) The fees of consulting firms for their services in respect of a supplementary retirement plan for executives of the Company; and

(g) Fees for legal services in the amount of $5,315 paid to the firm of Fasken, Campbell Godfrey in 1995.

In the course of the proceeding, Kerry Canada agreed to reimburse the Fund for the expenses referred to in items (f) and (g), together with the income that would have been earned thereon. Therefore, expenses in those categories are no longer in issue. The expenses in all of the other categories remain at issue between Kerry Canada and the Employees Committee. The Superintendent agrees with Kerry Canada that the expenses referred to in items (a) to (d) could be charged, as they were, to the Fund but contests the charging of some of the consulting fees referred to in item (e) to the Fund. The consulting fees that remain at issue between Kerry Canada and the Superintendent relate to the addition of a defined contribution option to the Plan.

Effect of the 1958 Trust Agreement

In interpreting the provisions of a trust agreement relating to the funding of a pension plan, it is important to keep in mind that such an agreement typically serves two distinct purposes. One purpose is to establish or continue a trust in respect of all or part of the pension fund (the "trust purpose"). The other purpose is to define the relationship between the plan sponsor or administrator and the trustee by setting out their respective rights and obligations (the "contractual purpose"). The various provisions of the agreement may serve one or both of these purposes. In fact, the settlement of the terms of a trust agreement usually begins with the template of the particular trust company that is to serve as trustee, which means that the protection of the interests of the trustee is likely to be prominent among the contractual purposes served by the agreement.

Sections 5 and 19 of the 1958 Trust Agreement, which were relied on by the Employees Committee in this proceeding, evidence what, in our view, is essentially a contractual purpose in providing for the payment by the Company of the Trustee's fees and the reimbursement by the Company of the expenses incurred by the Trustee in the execution of the trust and the performance of its duties under the Agreement. These same sections provide that unless or until such fees and expenses are paid by the Company, they are to constitute a charge upon the Fund. This arrangement provides a strong indication that the sections are designed primarily to ensure that the Trustee is paid, rather than to determine the ultimate allocation of responsibility for such payment as between the Company and the Fund.

Section 1 of the 1958 Trust Agreement describes the fund that is to be held in trust under that Agreement as comprising the fund established under the 1954 Trust Agreement together with additional sums paid to the Trustee, and earnings thereon, "less any payments which ... shall have been made by the Trustee as authorized [by the Agreement]." Section 3(a) of the Agreement reinforces the latter exclusion by stating that the Trustee may make payments out of the Fund "to such persons, or their beneficiaries or personal representatives" upon the certification of the retirement committee that such payments are in accordance with the provisions of the Plan and, "upon any such payment being made, the amount thereof shall no longer constitute part of the Fund." This section, like section 20 to which we were also referred, has the contractual purpose of protecting the Trustee from liability when acting upon the direction of the retirement committee. It should not be taken to reduce the scope of the pension fund assets that are impressed with a trust. We therefore reject the argument, put to us by Kerry Canada that the pension fund for the Plan that is subject to a trust comprises only those assets remaining in that fund after payment of any expenses authorized by the retirement committee or those officers of the Company acting on its behalf.

Nor is there anything in the 1958 Trust Agreement that would confine the trust to those assets in the pension fund that are required to provide the promised benefits and, therefore, that would justify treating surplus assets as outside the scope of the trust. On the contrary, as noted below, section 1 of the Agreement indicates that the trust assets are all of those assets that form part of the corpus or income of the Fund.

Section 1 of the 1958 Trust Agreement evidences a trust purpose in reciting that "no part of the corpus or income of the Fund shall revert to the Company or be used for or diverted to purposes other than for the exclusive benefit of such persons as from time to time may be designated under the Plan." This reflects a basic trust principle that trust assets are to be employed in the interests of the beneficiaries of the trust. Consistent with this principle, the Agreement also provides, in section 8, that in the event of the termination of the trust, no part of the Fund shall be used other than for the exclusive benefit of members, beneficiaries or personal representatives, as set forth in the Plan. We conclude that the beneficiaries of the trust to which the Fund is subject are those who, by the terms of the Plan, are members or who are their beneficiaries or personal representatives.

Section 11 of the 1958 Trust Agreement deals with the amendment or termination of that Agreement, providing that such action may be effected by an instrument in writing executed

by the Company and the Trustee. In other words, the normal contractual effect is to be given to the Agreement in the sense that it is subject to alteration by subsequent agreement of the parties, without the need to involve those who may have some beneficial or third party interest under the Agreement. However, the section goes on to recognize and preserve the trust nature of the Fund by stating that, unless approved by the Minister of National Revenue;

> no ... amendment shall authorize or permit any part of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of such employees, or their beneficiaries or personal representatives as from time to time may be included under the Plan and for the payment of taxes, assessments or other charges as provided in Section 5 and Section 19...

An amendment that authorizes the use of the trust assets of the Fund to pay expenses will be consistent with this limitation if those expenses:

- constitute taxes of any kind, including interest and penalties, levied or assessed against the Fund or the income thereof (as per section 5);
- represent compensation payable to the Trustee that is subject to a charge against the Fund unless or until paid by the Company (as per sections 5 and 19);
- are incurred by the Trustee in the performance of its duties that are subject to a charge against the Fund until paid by the Company (as per section 5); or
- are incurred for the exclusive benefit of the employees, their beneficiaries or personal representatives under the Plan.

The inclusion of the first three classes of expenses within the limitation seems redundant because the 1958 Trust Agreement specifically authorizes the charging of those expenses to the Fund. However, if that Agreement were to be amended to transfer the sole responsibility for any of these three classes of expenses to the Company, section 11 would permit a second amendment for the purpose of making those expenses chargeable to the Fund once again, as under the 1958 Trust Agreement before it was first amended.

We note that section 11 does not prohibit an amendment to those provisions of section 5 and 19 of the Agreement that provide for the payment of the fees and expenses of the Trustee by the Company. But such an amendment could only be effective (in the absence of the approval of the Minister of National Revenue) to transfer ultimate responsibility for such payment to the Fund where the fees and expenses are incurred for the exclusive benefit of the employees, their beneficiaries or personal representatives.

The Company did not, in fact, initiate an amendment to the 1958 Trust Agreement before starting to debit the Fund, commencing in 1985, with expenses of the kind that had previously been paid directly by the Company.

While the 1958 Trust Agreement was later replaced by a new trust agreement with a different Trustee (the "2000 Trust Agreement"), the latter Agreement does not purport to modify the basic trust principle, evidenced by the 1958 Trust Agreement, that no part of the Fund shall be used or diverted other than for the exclusive benefit of those persons who, by the terms of the Plan, are members or are the beneficiaries or personal representatives of such members.

Effect of the Employee Booklets Describing the Plan

In arguing that the Company was obliged to assume the expenses of the Plan (except for taxes, interest and penalties levied against the Fund), the Employees Committee placed some reliance on the text of two employee booklets issued by the Company to employees to explain the terms of the Plan, namely the 1975 Employee Booklet and the 1988 Employee Booklet. The 1988 Employee Booklet states that "the Company will contribute all additional amounts [beyond the member contributions] that are required to fund the Plan as well as all expenses associated with the Plan." There is a similar statement in the 1975 Employee Booklet.

The 1988 Employee Booklet contains the *caveat* that it "describes the main provisions of the Plan" and "if there should be any conflict between [the] booklet and the official text [of the Plan], the text will govern in all cases." Therefore, at most, the 1988 Employee Booklet should be taken to describe a practice as to the payment of the expenses of the Plan and not an undertaking by the Company to pay those expenses. If the booklet were to constitute such an undertaking, it would be inconsistent with and, therefore, subordinate to the expense provisions of the 1987 Plan, which are described below. The 1987 Plan is the form of the Plan that is summarized in the 1988 Employee Booklet. The 1975 Employee Booklet states that it is a summary of the Plan, not a legally binding document. In that case, its statement that the Company pays the cost of administering the Plan cannot create a legal obligation on the part of the Company to continue to do so.

Effect of the Amendments of the Plan

The 1954 Plan, which was in effect when the 1958 Trust Agreement was entered into, contained no provision dealing with payment of expenses relating to the Plan or the Fund. However, the Company amended the Plan in 1975 to provide that the Fund should be chargeable with the fees of the trust company, investment counsel or other fund manager appointed to manage the invested assets of the Fund, the expenses of any such fund manager in respect of the Plan, payment of which was not provided by the Company, and other expenses in respect of the Plan reasonably and properly incurred by such fund manager or the Company that the Company directs be paid from the Fund (section 5 of Article XVII of the 1975 Plan). In 1987, this was replaced by a provision to the effect that all normal and reasonable expenses incurred in the operation of the Plan, including those for actuarial, consulting, administrative, investment management and auditing services, as well as government filing fees, were to be withdrawn from the Fund (Article 15.04 of the 1987 Plan). In 2000, the expense provision was amended once again, to provide that all costs and expenses incurred by the Company as administrator of the Plan on behalf of the Plan or the Fund or by its agents or advisors in respect of the Plan or the Fund may be paid from the Fund, including actuarial, consulting, legal and accounting fees and disbursements, expenses relating to the addition of the defined contribution option and expenses incurred in winding up the Plan (Article 15.04).

These Plan amendments are not inconsistent with the relevant provisions of the Plan that authorized amendments from time to time. Those provisions generally permitted amendments that would not adversely affect the vested rights or accrued benefits of members under

the Plan (Article 22 of the 1954 Plan, Article XX of the 1975 Plan and Article 16.02 of the 1987 Plan). As the funding of the Plan was in a substantial surplus position at all relevant times, the amendments were unlikely to run afoul of this limitation even though they would cause the diversion of some of the assets from the Fund. Those diverted assets could fairly be taken to be surplus assets not required to satisfy the vested rights and accrued benefits of members.

The Employees Committee argued that the expense provisions added to the Plan in 1975, 1987 and 2000 are inconsistent with sections 5 and 19 of the 1958 Trust Agreement. As noted above, those sections provide for the payment by the Company of the fees and expenses of the Trustee in connection with the performance of its duties and for a charge against the Fund for the amount thereof unless or until paid by the Company. In our view, there is no inconsistency. We have already indicated that the provisions of the 1958 Trust Agreement dealing with the payment of the fees and expenses of the Trustee are primarily for the purpose of fixing the responsibility of the Company vis-à-vis the Trustee. Therefore, they should not be taken to determine that all fees and expenses for which the Company is accountable to the Trustee must ultimately be borne by the Company as opposed to the Fund. The 1975, 1987 and 2000 amendments to the Plan deal with the matter of ultimate responsibility and, therefore, can be reconciled with sections 5 and 19 of the 1958 Trust Agreement when the Agreement and the Plan are read together as they should be, particularly since the Agreement recites that it forms part of the Plan.

However, the expense provisions of the 1975, 1987 and 2000 versions of the Plan must be measured against the terms of the trust to which the Fund is subject by virtue of the 1958 Trust Agreement. They cannot be taken to authorize the use or diversion of any part of the Fund other than for the exclusive benefit of such persons as from time to time may be designated under the Plan (see particularly section 1 of the Agreement). Accordingly, those provisions should be "read down" so that they only apply to authorize the charging of expenses to the Fund when those expenses are for the exclusive benefit of such persons. As none of the parties to this proceeding maintained that such persons would include any persons other than members of the Plan, their beneficiaries or personal representatives, we use the shorthand expression "members of the Plan" hereafter to refer to those persons.

Although we have discussed, at some length, the expense provisions of the Plan, this should not be taken as indicating that we are of the opinion that plan documents must contain specific provisions authorizing the charging to a pension fund of expenses relating to the plan or the fund before such an allocation can be made. In fact, it will probably be implicit in the nature of the usual funding arrangements for a pension plan that the pension fund should bear the expenses that are reasonably incurred in connection with the operation of the plan and the fund. In the present case, a more stringent criterion for charging expenses to the Fund is applicable in that the expenses must be for the exclusive benefit of the members of the Plan before they can be charged to the Fund. This is so because of the specific terms of the trust to which the Fund is subject.

Expenses for the Exclusive Benefit of the Members of the Plan

How then do we determine whether the kinds of expenses that were charged to the Fund after 1985 were for the exclusive benefit of the mem-

bers of the Plan? We heard expert evidence that the expression "for the exclusive benefit of the members of a pension plan" has no special meaning in the actuarial community.

We believe that expenses in relation to the Plan that are for the exclusive benefit of the members of the Plan, in the sense of the 1958 Trust Agreement, must logically mean expenses that are for the primary benefit of the members since no such expense can fairly be said to be for the exclusive benefit of the members on a strict literal view of that expression. For example, the Company undoubtedly realizes a benefit from the incurring of such expenses since the Plan, in relation to which the expenses are incurred, presumably enhances the morale, security and retention of employees on whom the Company's productivity and profitability depend. A strict interpretation of "exclusive benefit" could even preclude the payment of a pension benefit to a member because, arguably, such payment would also benefit the Company by discharging its obligation.

Of the expenses that remain in dispute between Kerry Canada and either of the responding parties, in our view the only ones that cannot be characterized as being for the primary benefit of the members are certain fees of consulting firms that relate to the addition of a defined contribution option to the Plan. Those fees, which total $6,455, are for advice provided in 1999 in connection with consideration of the possibility of introducing a defined contribution option to the Plan, including the costing of such an option.

We believe that once the decision is made to introduce that option, the fees relating to the implementation of the option are for the primary benefit of the members. Such fees would relate to such matters as the development of the appropriate Plan amendments, communications to Plan members with respect to the option and the processing of the conversion for those taking advantage of the option.

Trust and Plan Amendment Remedy

By the terms of the Second Proposal in the Notice of Proposal, the Superintendent proposes to order Kerry Canada to amend the Plan, and the terms of the trust to which the Fund is subject, in effect to limit, in express terms, the expenses that are payable from the Fund to those that are for the exclusive benefit of the members, which we have interpreted as meaning for the primary benefit of the members. We have already noted that the trust principle evidenced by the 1958 Trust Agreement — that no part of the Fund should be used or diverted in a way that is not for such benefit — was left unchanged, although not repeated, in the 2000 Trust Agreement, the only subsequent Trust Agreement. Therefore, there can be no need to reinstate that principle in explicit terms, by amendment to the trust, because the principle has not been abrogated by any subsequent trust agreement.

While it might be desirable for the provisions of the Plan to reflect, more accurately, the limitation of the terms of the trust as they apply to the charging of expenses to the Fund, we have concluded that the Superintendent has no authority to direct Kerry Canada to amend the Plan to that end.

The Superintendent argued that the Act carries the implied authority to order such an amendment, relying particularly on section 18 of the Act. There is certainly nothing in the Act that gives the Superintendent express authority to order that an amendment be made to a pension plan. Where the Act does refer to plan amendments, it contemplates their initiation by the administrator of the plan (see sections 12 & 13).

The 1975, 1987 and 2000 Plan amendments were initiated in that fashion and the 1975 and 1987 amendments were duly registered by the Superintendent, although they contained provisions about the payment of expenses from the Fund that we consider to be overly broad, on their face, because they do not confine the expenses that are chargeable to the Fund to those that are for the primary benefit of the members of the Plan. The Act does specify certain categories of plan amendments that are void (see section 14), but the expense provisions introduced by the 1975, 1987 and 2000 Plan amendments do not fall within any of those categories. We are unable to conclude that the Superintendent has the authority, in the present context, to direct that the Plan be amended to modify the effect of all or any of those amendments by limiting the expenses chargeable to the Fund to those that are for the exclusive benefit, in the sense of the primary benefit, of the members.

As the Superintendent does not have this authority, the Tribunal likewise does not have the authority on a Request for Hearing under section 89 of the Act, which is what gave rise to this proceeding. Under that section, the Tribunal may only direct the Superintendent to carry out or refrain from carrying out a proposal "and to take such action as the Tribunal considers the Superintendent ought to take in accordance with [the] Act and the regulations" (subsection (9)). Therefore, at the end of a proceeding this Tribunal can only order the Superintendent, and not others, to do something, except that the payment of costs (see section 24 of the *Financial Services Commission of Ontario Act, 1997*), and perhaps some other incidental forms of relief, may be ordered against others. Before ordering the Superintendent to do something, the Tribunal must be satisfied that the Superintendent has the authority, by the terms of the Act or the regulations under the Act, to do what the Tribunal would order him to do.

In proceedings under section 89 of the Act, this Tribunal has, on occasion, ordered the Superintendent to carry out a proposal with some modification to what was originally proposed or to carry out some part of the proposal but to refrain from carrying out another part of the proposal. This is a proper exercise of the Tribunal's authority under subsection 89(9) of the Act and is appropriate in the present case.

Disposition

We order the Superintendent to carry out the First Proposal contained in the Notice of Proposal, i.e. the proposal to order Kerry Canada to reimburse the Fund for all amounts paid out of the Fund after January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members of the Plan, together with all income that would have been earned by the Fund if those expenses had not been paid from the Fund. However, we also order the Superintendent to modify its proposed order by specifying the amounts to be reimbursed, with foregone income, as comprising:

- the consulting and legal fees that the Kerry Canada has agreed, in the course of this proceeding, to repay to the Fund (as described in (f) and (g) under the heading "Expenses at Issue"); and
- the consulting fees, aggregating $6,455, for advice provided in connection with the possibility of introducing a defined contribution option to the Plan, including the costing of such an option (described under the heading "Expenses for the Exclusive Benefit of the Members of the Plan").

Finally, we order the Superintendent to refrain from carrying out the Second Proposal contained in the Notice of Proposal, i.e. the proposal to order Kerry Canada to amend the Plan and the terms of the trust to which the Fund is subject so as to limit the expenses that are payable from the Fund to those that are for the exclusive benefit of the members of the Plan.

If any party wishes to make application for an order of costs in this matter, it may do so by written request filed with the Tribunal and served on the other parties within 30 days of this decision. The other parties shall have 14 days to file and serve written responses to any such request.

DATED at Toronto, Ontario, this 4th day of March, 2004.

Colin H.H. McNairn,
Vice-Chair of Tribunal and Chair of the Panel

Shiraz Y.M. Bharmal,
Member of the Tribunal and of the Panel

David A. Short,
Member of the Tribunal and of the Panel

APPENDIX
Selected Trust Agreement and Pension Plan Provisions

1958 Trust Agreement

Section 1

The 1954 Agreement is hereby terminated with effect from the date hereof, provided that no act, thing, document or deed heretofore done, made or executed under the 1954 Agreement shall be prejudiced or invalidated by such termination, but shall continue in full force and effect until duly dealt with under the terms of this Agreement. The Fund as established under the 1954 Agreement, together with such sums of money and such property acceptable to the Trustee as shall from time to time be paid or delivered to the Trustee and the earnings and profits thereon, less the payments which at the time of reference shall have been made by the Trustee as authorized herein, shall constitute the Fund hereby created and established. The Fund shall be held by the Trustee in trust and dealt with in accordance with the provisions of this Agreement. No part of the corpus or income of the Fund shall ever revert to the Company or be used for or diverted to purposes other than for the exclusive benefit of such persons as from time to time may be designated in the Plan.

Section 5

The expenses incurred by the Trustee in the performance of its duties, including fees for expert assistants employed by the Trustee with the consent of the Company and fees of legal counsel, and such compensation to the Trustee as may be agreed upon in writing from time to time between the Company and the Trustee, and all other proper charges and disbursements of the Trustee shall be paid by the Company, and until paid shall constitute a charge upon the Fund. All taxes of any and all kinds whatsoever, including interest and penalties, that may be levied or assessed under any existing or future laws upon or in respect of the Fund or the income thereof shall be paid from the Fund.

Section 11

This Agreement may be amended in whole or in part or be terminated any time and from time to time by an instrument in writing executed by the Company and the then Trustee: provided however that unless approved by the Minister of National Revenue no such amendment shall authorize or permit any part of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of such employees, or their beneficiaries or personal representatives as from time to time may be included under the Plan, and for the payment of taxes, assessments or other charges as provided in Section 5 and Section 19 herein, provided, it being understood that this proviso is not to be construed to enlarge the obligations of the Company beyond those assumed by it under the Plan.

Section 19

The Trustee shall be entitled to compensation in accordance with the Schedule of Fees on pension and profit-sharing trusts of National Trust Company, Limited now in effect, which compensation may be adjusted from time to time based upon experience hereunder, as and when agreeable to the Company and the Trustee. Compensation payable to any successor trustee shall be agreed to by the Company and such successor trustee at the time of its designation. Such compensation shall constitute a charge upon the Fund unless it shall be paid by the

Company. The Company expressly agrees to pay all expenses incurred by it or by any Trustee in the execution of this Trust and to pay all compensation which may become due to any Trustee under the provisions of this Agreement.

Section 20

Notwithstanding anything herein or in the Plan contained, it is understood and agreed that the Trustee does not nor shall be deemed to assume any responsibility for the terms and provisions of or be involved in any way whatsoever in the administration of the Plan nor shall the Trustee be under any duty or obligation to determine whether any payment or delivery made by it from the Fund pursuant to the instructions, direction or order of the Committee from time to time constitute any use or diversion of the Fund for purposes other than the payment or provision for the retirement benefits and the cash payments provided for in the Plan, if such payment or delivery is certified by the Committee to be in accordance with the provisions of the Plan.

1954 Plan

Article 22

The Company has made every effort to develop this Plan as a safeguard to its employees and as an undertaking which will meet future conditions insofar as they can be anticipated at the present time. The Company hopes to continue the Plan indefinitely but must and does reserve the right to change, modify, suspend or discontinue the Plan, should future conditions, in the judgment of the Company, warrant such action.

If any social security or pension benefits should be created in favour of the Members of the Plan, by means of legislation under which the Company would be required to make contributions to or for the benefit of such Members, either directly or indirectly, through taxation or otherwise, the Company may with respect to such Members either discontinue the Plan or make such modifications as the Company considers equitable, without limiting the general rights reserved to the Company above.

However, all contributions made by the Company are irrevocable, and, together with all contributions made by Members, may only be used exclusively for the benefit of Members, retired Members, their beneficiaries or estates, and their contingent annuitants. No change or modification will effect any rights which such persons may then have with respect to the terms of payment of, or the amount of, retirement income, which the contributions made by the Member and/or the Company, prior to the effective date of such change or modification, will provide.

If it ever should be necessary to discontinue the Plan, contributions made by the Company cannot be withdrawn, but must remain in the Trust Fund. In such event the Trust Fund shall be distributed among the Members and retired Members and their beneficiaries and estates and contingent annuitants in an equitable manner determined by the Retirement Committee in consultation with the Actuary and the Company, or, if the Company shall have been wound up or have become bankrupt, by the liquidator or Trustee in Bankruptcy of the Company as the case may be. No liability shall attach to the Retirement

Committee or any person thereon, or the Company, or the Liquidator, or the Trustee in Bankruptcy in connection with the distribution, if made in all sincerity and good faith.

1975 Plan

Article XVII, Section 5

The Fund shall be chargeable with the fees of the Fund Manager and any expenses incurred by the Fund Manager in respect of the Plan for which payment is not provided by the Company, and any expenses in respect of the Plan reasonably and properly incurred by the Fund Manager or the Company which the Company may direct to be paid from the Fund.

Article XX

1. Notwithstanding anything herein contained, but subject to Section 3 of this Article, the Plan may be amended at any time and from time to time by the Company, and all such amendments shall be binding on the Company and on every Member.
2. Notice of every such amendment shall forthwith be given to the Fund Manager If the amendment directly or indirectly affects the benefits due to the Members, notice thereof shall be given to the Members.
3. No such amendment shall adversely affect the right of a Pensioner to continue to receive his pension under the Plan, or adversely affect any vested right as the same exists under the Plan at the date of such amendment, or reduce the benefits which the Member has accrued by reason of service to the date of the amendment, except as provided under Article XV (RIGHTS ON DISCONTINUANCE OF PLAN).

1987 Plan

Article 15.04

All normal and reasonable expenses incurred in the operation of the Plan shall be withdrawn from the Pension Fund, unless otherwise paid by the Company. Such expenses may include, but shall not be limited to, those relating to actuarial, consulting, administrative, investment management and auditing services, as well as government filing fees.

Article 16.02

No amendment to the Plan shall operate to reduce the benefits which have accrued to Members hereof prior to the date of such amendment, nor shall the Company have the power to make any amendment which would cause or permit any portion of the contributions made prior to that date to be diverted, prior to making provisions for the satisfaction of all liabilities of the Plan, for purposes other than the benefit of the Members, their respective estates, Beneficiaries or joint annuitants in accordance with the provisions of the Plan, the requirements of Revenue Canada and the provisions of the Pensions Benefits Act. In the event of termination of the Plan, the Company shall not be obligated to make any further contributions to the Plan with respect to service after the date of such termination of the Plan.

2000 Plan

Article 15.04

(a) Subject to paragraph (b), all costs and expenses incurred by the Administrator on behalf of the Plan or the Pension Fund may be paid from the Pension Fund or by the Company from the Forfeiture Account or otherwise, including without limitation, the fees and disbursements of the agents of the Administrator with respect to the Plan or Pension Fund, the fees and disbursements of the advisors with respect to the Plan or Pension Fund, including actuarial, consulting, legal and accounting fees and disbursements, expenses incurred in connection with adding a defined contribution component to the Plan, and expenses incurred in winding up the Plan. The administrator or the Company or either of them may pay any such fees and expenses on behalf of the Plan or Pension Fund, subject to reimbursement by the Pension Fund in accordance with Applicable Legislation.

(b) The following expenses shall be paid from each of the Accounts under Part 2: the investment management fees of the Funding Agency related to such Account and the costs related to the investments of the Investment Fund(s) in which such Account is invested, including brokerage, commissions and transfer taxes, and costs related to investment counsel and investment management services.

[The investment management expenses referred to in clause (b) relate to those incurred in respect of defined contribution accounts under the Plan.]

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